

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10943-mew

4 - - - - - x

5 In the Matter of:

6 VOYAGER DIGITAL HOLDINGS,

7 Debtor.

8 - - - - - x

9 Adv. Case No. 22-01133-mew

10 - - - - - x

11 VOYAGER DIGITAL HOLDINGS, INC.,

12 Plaintiff,

13 v.

14 DESOUSA,

15 Defendant.

16 - - - - - x

17 Adv. Case No. 22-01170-mew

18 - - - - - x

19 THE AD HOC GROUP OF EQUITY INTEREST HOLDERS OF VOYAGER OF
20 VOYAGER DIGITAL LTD.,

21 Plaintiff,

22 v.

23 VOYAGER DIGITAL HOLDINGS, INC., et al.,

24 Defendants.

25 - - - - - x

1 United States Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
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5 March 3, 2023
6 10:08 AM
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21 B E F O R E :

22 HON MICHAEL E. WILES

23 U.S. BANKRUPTCY JUDGE
24

25 ECRO: F. FERGUSON

1 HEARING re Adversary proceeding: 22-01133-mew Voyager
2 Digital Holdings, Inc. v. De Sousa Motion to extend
3 automatic stay or, in the alternative, for injunctive relief
4 enjoining prosecution of certain pending litigation against
5 the debtors, directors and officers

6
7 HEARING re Adversary proceeding: 22-01170-mew The Ad Hoc
8 Group of Equity Interest Holders of Voy v. Voyager Digital
9 Holdings, Inc. et al
10 Pre-trial Conference

11
12 HEARING re Motion to hold the directors personally liable

13
14 HEARING re Joinder to motion by David Stephenson

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16 HEARING re Motion for an equity committee

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18 HEARING re Joinder to motion by David Stephenson

19
20 HEARING re Motion by Michelle D. DiVita to appoint a chapter
21 11 trustee

22 Objections filed
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1 HEARING re Motion by Tracy Hendershott to convert case to

2 chapter 7

3 Objection filed

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5 HEARING re Motions by Alah Shehadeh

6 Objection filed

7

8 HEARING re Objection of the Official Committee of Unsecured

9 Creditors to proofs of claim nos. 11206, 11209 and 11213

10

11 HEARING re Combined hearing RE: to consider approval of the

12 disclosure statement and confirmation of the chapter 11 plan

13 Objections filed

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25 Transcribed by: Sonya Ledanski Hyde

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I N D E X

| WITNESSES: | DIRECT: | CROSS: | REDIRECT: | RECROSS: |
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| BRIAN TICHENOR | 24 | 41/99/111 | | |
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| PAUL HAGE | 233 | 247 | | |
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| EXHIBITS: | PAGE: |
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| Exhibit 1109-2 | 236 |
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P R O C E E D I N G S

THE COURT: Please be seated. All right, are we ready to continue?

MR. SLADE: Yes, Your Honor.

THE COURT: Let me just log into my computer screen. We'll be all set.

MR. SLADE: Sure.

THE COURT: Okay. Can I ask a question about the evidentiary presentations?

MR. SLADE: Certainly.

THE COURT: A number of the objections have criticized the selection of the proposed plan administrator. Do you have any witnesses who are going to address that?

MR. SLADE: We do intend to introduce his resume into evidence, and that was one of the things I was going to cover right now.

THE COURT: All right. And do you anticipate any testimony from anybody from Binance?

MR. SLADE: We do not.

THE COURT: So --

MR. SLADE: We have asked them to provide a witness, and they declined.

THE COURT: That seems odd, doesn't it?

MR. SLADE: Not in my experience, Your Honor. I mean, I've done a lot of these where the buyer, we ask the

1 buyer to testify and the buyer declines to testify. So in
2 that respect -- I mean, this is an unusual case which is why
3 we made the request, but I understand the question. We
4 asked it as well.

5 THE COURT: Well, I have a host of objections
6 asking me, based on what's happened in the industry in
7 general, to try to be careful about Binance and about how it
8 treats customers and how it segregates customer payments,
9 and essentially you're asking me to rely entirely on unsworn
10 hearsay on those points.

11 MR. SLADE: We are going to -- Mr. Tichenor is
12 going to testify about the additional diligence that we did
13 and --

14 THE COURT: But in the end, his diligence is
15 largely hearsay, right? It's what Binance tells him.

16 MR. SLADE: Is it largely hearsay. We have some
17 evidence, some of which was provided confidentially that I
18 would want to confirm that I'm allowed to disclose.

19 THE COURT: Yeah.

20 MR. SLADE: But I understand Your Honor's
21 questions and concerns and we are asking the same questions.

22 THE COURT: Okay. I had mentioned yesterday, and
23 these are things for you to discuss with Binance because
24 they're things I'm thinking about and maybe there are issues
25 that are easy modifications that would make points go away,

1 but I had mentioned the length of the custody trust
2 relationship to make sure that it continues until somebody's
3 had an actual meaningful opportunity to withdraw their
4 crypto, if that's what they choose to do.

5 I'm still unclear in the unsupported
6 jurisdictions, if somebody does not want to be a Binance
7 customer, do they have to wait six months or can they get
8 cash in three months like people in other states can get?

9 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
10 and Watkins on behalf of Binance.US. The terms of the deal
11 are that customers in unsupported jurisdictions would be --
12 their cryptocurrency would be held by the Debtors for six
13 months from the closing date until there is a solution with
14 any of the unsupported jurisdictions. As I think Your Honor
15 is aware, Binance.US, the Debtors, and the State of Vermont
16 have reached an agreement on the terms of distributions to
17 Vermonters and we're working earnestly to achieve similar
18 resolutions with other unsupported jurisdictions and I'm
19 hopeful we'll be able to do so.

20 THE COURT: I understand the reasons why the
21 parties say that as to people who want crypto in-kind
22 distributions, why you can't do it in violation of law, why
23 you want six months try to work it out. I understand all
24 that. But as to people in the unsupported jurisdictions, if
25 I'm using the correct phrase here, who don't want in-kind

1 distributions and don't want to be Binance customers, why do
2 they have to wait six months? Why can't they get the same
3 three-month treatment that people in other states get?

4 MR. GOLDBERG: Well, Your Honor, essentially the
5 business deal that was struck between Binance and the Debtor
6 --

7 THE COURT: I don't care what the business deal
8 is. From the bankruptcy point of view, why can't they have
9 the same terms as people in other states? Why, just because
10 I live in Texas, if I am absolutely sure that I don't want
11 to be a Binance customer, why can't I do the same thing as
12 somebody who's in Ohio and just get cashed out in three
13 months? Why do I have to wait six months?

14 MR. GOLDBERG: The objective with that provision,
15 Your Honor, is to attempt to reach a solution that complies
16 with applicable regulations to permit distributions in kind,
17 which is the goal of creditors.

18 THE COURT: But if I don't want an in-kind
19 distribution, I live in Texas and I say I'd rather get my
20 cash in three months, I don't want in-kind distributions,
21 why do I have to wait six months?

22 MR. GOLDBERG: Well, Your Honor, the -- Binance's
23 transactions to acquire all of the customers onto the
24 platform and serve as distribution agent to --

25 THE COURT: But you know you're not acquiring all

1 of the customers in Ohio. You know, those people don't have
2 to go to Binance. They have a right to just be cashed out
3 in three months if that's what they want. So if I'm in
4 Texas and I similarly don't want to be a Binance customer,
5 why don't I get the exact same opportunity? I don't
6 understand it.

7 MR. GOLDBERG: Essentially the goal there was to
8 align the terms for all other customers which was to provide
9 custom -- Binance with the ability to acquire all of the
10 customers and deliver the crypto to customers as quickly as
11 possible for those who want to be part of the Binance
12 platform. That transaction enabled the Debtors to receive
13 the maximum amount of value available for Binance to benefit
14 the estate as a whole and --

15 THE COURT: You know -- but look. I understand
16 that you want to give everybody a chance to get in-kind
17 distributions. I understand that you want on behalf of
18 Binance to get customers if you can. But obviously, we
19 can't force customers to go to you. And as to customers in
20 48 states, you have recognized that they don't have to open
21 Binance accounts and if they don't, within three months,
22 that they get cash distributions.

23 My question is, why can't somebody in Texas, New
24 York, Vermont, Hawaii, whatever your unsupported
25 jurisdictions still are, why can't they say in that same

1 three-month period, I don't want to go to Binance? This --
2 you know, why do you get longer to try to convince them to
3 be Binance customers than you get with respect to people in
4 Ohio? Don't get it.

5 MR. GOLDBERG: Well --

6 THE COURT: Why can't they have the affirmative
7 right to tell you, I don't want this, I want my cash, so
8 that I can have -- so that I can have the same rights that
9 somebody in Ohio has? I can't give them the same rights to
10 in-kind distributions because there are state laws in
11 effect. I understand that. I can give them the same right
12 to get cash distributions at the same time as people in
13 other states have and I'm having a lot of trouble
14 understanding why I'm not -- why I shouldn't do that, in
15 fact, why I'm not required to do that.

16 MR. GOLDBERG: I understand Your Honor's point. I
17 think our position there is, Your Honor, that the creditors
18 do have the same opportunity to recover value from the
19 estate as quickly as possible in accordance with applicable
20 law and that part of the value proposition that is
21 benefiting the estate and that was voted on by creditors, is
22 to provide that opportunity for Binance, the Debtors, and
23 each of the unsupported jurisdictions to seek to achieve a
24 resolution that enables distributions to customers within
25 that time period. And once the resolutions occur, as was

1 the case with Vermont, the -- those states will no longer be
2 considered a unsupported jurisdiction.

3 THE COURT: That's fine. And I have no problem
4 with your trying to work that out, but you may not be able
5 to work it out. You've got, at least New York seems to be
6 an obstacle for you. So my -- I'm left with this problem,
7 right, that I understand all your explanations about how you
8 can't change the past. You can't give yourself a regulatory
9 approval that you don't have. You can't distribute crypto
10 in kind in New York like you can elsewhere because New York
11 says you can't.

12 I understand all that, but none of that explains
13 why you can't give New York customers the same right to a
14 cash distribution in three months as you give to people in
15 other states. There's no explanation for that other than, I
16 suppose, your desire to market Binance to people in New
17 York. But why people in New York then have to take an extra
18 three months than people in Ohio if they don't want to go to
19 Binance is a mystery to me.

20 It's easily solvable. All you have to say is that
21 people -- customers can tell you if they elect not to go to
22 Binance. You don't have to wait this three months. They
23 should be able to just make an election not to go to Binance
24 and if they do that, they get their cash distribution in the
25 three-month period that you've specified. Why is that so

1 hard?

2 WOMAN 1: Your Honor, we just got a notification
3 that people on the phone can't hear.

4 THE COURT: My microphone is supposedly on, I
5 think. Can anybody hear me now?

6 MAN 1: We have the same as you, Your Honor.
7 (indiscernible) the whole Court Solutions system is not --
8 is down.

9 THE COURT: Is down?

10 MAN 1: For this hearing. (indiscernible) certain
11 hearings (indiscernible).

12 THE COURT: I see. So it's not this microphone.
13 It's Court Solutions. Great. I don't want to have to
14 repeat all that.

15 MR. GOLDBERG: I hear you loud and clear, Your
16 Honor.

17 MAN 1: (indiscernible).

18 THE COURT: Yeah, would you -- thanks.

19 AUTOMATED VOICE: Thank you. Your personal
20 identification number has been accepted. Welcome to your
21 telephonic courtroom. Your line is live. To access the
22 Court Solutions advanced call features, go to Court-
23 Solutions.com and open the hearing dashboard. You are
24 entering the courtroom.

25 THE COURT: I apologize for those who were

1 unknowingly to me kind of bounced off the call here with the
2 Court Solutions connection going down. I don't know how
3 much you heard and didn't hear. Does anybody here have any
4 idea when the connection stopped?

5 WOMAN 1: We lost four minutes and 20 seconds.

6 THE COURT: Thanks. Okay. Unfortunately, I can't
7 rewind in my head that precise amount of time. I was asking
8 some questions about the evidence that's going to come in
9 today. You probably heard that. And then I was identifying
10 -- in the process of identifying three issues that I would
11 like the Debtors to be discussing with Binance because they
12 seem to me to be relatively small changes in the
13 arrangements here that might go a long way to eliminating
14 some of the objections.

15 The first was that I have previously said in the
16 order approving the Binance agreement that any assets
17 transferred to Binance were absolutely held by Binance
18 nominally only and were held in trust and in custody for
19 either the Debtors or the customers until the distributions
20 were completed. I had said that in the order that we
21 entered that approved the Binance transactions subject to
22 this hearing.

23 But I also yesterday indicated that it seemed to
24 me that maybe we ought to make clear that that custody
25 provision continues for -- I'll let people tell me -- a

1 reasonable time so that we don't find that we've sort of had
2 it end instantaneously upon the crediting to a customer's
3 account so that if somebody actually wants to make a
4 withdrawal, which was the whole point, somebody wants to
5 actually make a withdrawal without having subjected
6 themselves to undue risk, they can actually do so.

7 Doesn't have to be a real long period of time, but
8 it shouldn't be a second and it shouldn't be a minute. It
9 should be something that's meaningful so that people can
10 actually act to get what they want within this time period
11 that this custody and trust provision applies.

12 Another issue I was raising here is that I still
13 will hear argument of course, from the states and the
14 unsupported jurisdictions about whether there is unfair
15 discrimination, but I do understand at least the contrary
16 argument that as to in-kind distributions, we can't change
17 the past. We can't undo the failure to have regulatory
18 approvals and we can't do what regulations in different
19 jurisdictions do not allow us to do.

20 And you know, the only way to have equal treatment
21 as a result of that is to make 48 states wait just because
22 we can't do everything in all 52 states, which seems like a
23 not very perfect solution. But at the same time, it seems
24 to me that the whole program is set up so that people in 48
25 states who do not want to be Binance customers get cashed

1 out in three months; whereas, people in the unsupported
2 states have to wait six months even -- not just because
3 we're trying to solve the ability to give them crypto, but
4 even if they don't want in-kind distributions, even if they
5 would prefer to be cashed out, they nevertheless still have
6 to wait six months.

7 And I don't -- I am having a lot more trouble
8 understanding a proper basis for that different treatment.
9 And I'm suggesting that perhaps the agreement could easily
10 be changed so that if somebody in the unsupported
11 jurisdictions simply makes an election in a form that the
12 parties can designate, that they too can get their cash
13 within three months. I think that would go a very long way
14 towards resolving the arguments about unequal treatment of
15 the creditors and of the customers.

16 And the other provision I wanted to address that
17 came up a lot yesterday was the transfer of customer
18 information. And I understand the argument about the
19 Debtors' rights to sell the information. I understand that
20 at least part of what's going on here is an effort to give
21 Binance the chance to market itself to customers. I
22 understand that. And I understand for that reason that you
23 want -- I certainly understand why you want to contact
24 information with the customers' email addresses, addresses,
25 so you can try to convince them to be part of your platform.

1 But do you need to transfer all information that
2 you have about a customer, all of the know your customer and
3 other data you have, bank account records and whatever
4 information it amounts to, do you need to transfer all of
5 that up front? Isn't it easy, relatively, to modify this so
6 that that information, other than the contact information,
7 only gets transferred when the customer elects to be a
8 Binance customer?

9 Is there any reason why Binance needs all of that
10 other information for people who don't elect to be Binance
11 customers? Isn't it a little safer and better protection
12 for those customers if we do the transfer of that kind of
13 data in stages and in pieces? I'm not asking you to give me
14 a definitive answer. I'm just suggesting to you that these
15 are things that seem relatively easy to change to me. They
16 may not be as perfect as you would like, but they don't
17 really seem to me to have an impact on your business deal
18 and they'll go a long way towards addressing a lot of the
19 concerns that people have expressed. Okay?

20 MR. GOLDBERG: Thank you, Your Honor. I hear you
21 loud and clear on those issues and we'll work with my
22 clients to --

23 THE COURT: Great.

24 MR. GOLDBERG: -- endeavor to respond. I would --
25 I can definitively answer the first question, however --

1 THE COURT: Yeah.

2 MR. GOLDBERG: -- which was we included language
3 in the confirmation order which is at the end of Paragraph
4 99 to make clear that the -- any cryptocurrency that is
5 delivered to Binance remains property of the Debtors and
6 remains property of the customers to which those coins
7 should be allocated. And we are happy to include any
8 language that provides comfort on that issue.

9 THE COURT: Very good.

10 MR. GOLDBERG: That is absolutely the intent.

11 THE COURT: Very good. I appreciate that. Thank
12 you.

13 MR. GOLDBERG: Thank you, Your Honor.

14 MR. SLADE: Good morning, Your Honor.

15 THE COURT: Good morning.

16 MR. SLADE: Mike Slade for the Debtors. Before --
17 we have one more witness, but I want to offer a number of
18 the, what I'm hoping will be noncontroversial exhibits into
19 evidence first. Is that okay?

20 THE COURT: Yes. Please.

21 MR. SLADE: First, I would like to offer Docket
22 No. 1125, which is the most recent version of the plan of
23 reorganization.

24 THE COURT: All right. It seems to me I have to
25 have that in evidence as it's what we're debating today, so

1 I will admit that into evidence.

2 MR. SLADE: And then from our exhibit list, which
3 was filed at Docket No. 1129, I first want to offer the
4 exhibits related to the purchase agreements so that's
5 Exhibits 7, 6, 8, and 9, Docket No. 248, 748, 775, and 835.
6 And those are the asset purchase agreement and the first
7 amendment and the notice of successful bidder and also
8 Exhibit 11, Docket No. 860, which is, Your Honor, order
9 approving our entry into the asset purchase agreement.

10 THE COURT: All right. I think I can take
11 judicial notice of those documents and I will do so and they
12 are admitted into evidence.

13 (Exhibits 6, 7, 8, 9, 11 entered into evidence)

14 MR. SLADE: Thank you. I would like to offer the
15 plan supplement documents, so that again, off of our exhibit
16 list, Exhibit 15, 16, and 20 through 23. Those are Docket
17 Nos. 943, 951, 986, 1006, 1035, and 1115.

18 THE COURT: Once again, these are documents for
19 which approval is being sought. I can take judicial notice
20 of them and I do so. They are in evidence for this
21 proceeding.

22 (Exhibits 15, 16, 20 through 23 entered into
23 evidence)

24 MR. SLADE: Thank you, Your Honor. I offer the
25 customer agreement, which is Exhibit 19, also Docket No.

1 1074 at Pages 16 through 55.

2 THE COURT: This is -- okay. That's not a
3 document that's presented for my approval. Is there
4 somebody who can verify that that's the true and correct
5 copy of the customer agreement?

6 MR. SLADE: I can ask Mr. Tichenor who's our last
7 witness.

8 THE COURT: Okay.

9 MR. SLADE: Sure. And the other document I
10 mentioned earlier, Docket No. 1109-2, which is the resume of
11 proposed plan administrator.

12 THE COURT: Somebody's going to need to testify
13 and verify that, I think.

14 MR. SLADE: Fair enough. We'll --

15 THE COURT: Okay.

16 MR. SLADE: -- work with the Committee and figure
17 that out.

18 THE COURT: Great. Thanks.

19 MR. SLADE: And our last witness, Your Honor, is
20 Mr. Tichenor.

21 THE COURT: Mr. Tichenor, do you swear that the
22 testimony you're about to give will be the truth, the whole
23 truth, and nothing but the truth so help you God?

24 THE WITNESS: I do, Your Honor.

25 THE COURT: Thank you. State your full name for

1 the record, please.

2 THE WITNESS: Brian Tichenor.

3 THE COURT: All right. Counsel, you may proceed.

4 MR. SLADE: Thank you, Your Honor.

5 DIRECT EXAMINATION OF BRIAN TICHENOR

6 BY MR. SLADE:

7 Q Just to finish this up quickly, I'm handing you a copy
8 of what is Exhibit 19 which was also on the docket at Docket
9 1074 at Pages 16 to 55. That's the Voyager customer
10 agreement. Are you familiar with that document, Mr.
11 Tichenor?

12 A In a limited capacity, yes.

13 Q Have you reviewed it before?

14 A Yes.

15 Q And have you served as investment banker to the Debtors
16 since the petition date?

17 A I have.

18 MR. SLADE: Your Honor, I offer Exhibit 19.

19 THE COURT: All right, is there any objection or
20 any desire to voir dire the witnesses to that exhibit?
21 Okay. The exhibit is admitted.

22 (Exhibit 19 entered into evidence)

23 MR. SLADE: Thank you, Your Honor. I do have some
24 supplemental direct for Mr. Tichenor, but before I get
25 there, I would like to offer his declaration which is on the

1 docket at Docket No. 1113. It's also Exhibit 3 on our
2 exhibit list which was, again, back at 1129.

3 THE COURT: Are there any objections to the
4 admission of Mr. Tichenor's declaration into evidence? All
5 right. Anybody will have the right to cross examine him.
6 The declaration is admitted.

7 (Declaration of Brian Tichenor entered into
8 evidence)

9 MR. SLADE: Thank you.

10 BY MR. SLADE:

11 Q Okay. Mr. Tichenor, I want to get into a number of the
12 issues that we talked about during the hearing yesterday.
13 First, I think you heard it, some of the regulators and some
14 customers have expressed concerns and reservations about
15 Binance.US; would you agree?

16 A I would.

17 Q Now, I want to discuss exactly why the Debtors decided
18 to go through the complexity of having a Binance deal as
19 plan A and the toggle as plan B. Okay?

20 A Okay.

21 Q How much value leakage would there be if the Debtors
22 decide to exercise their fiduciary out and move away from
23 Binance towards the toggle plan?

24 A We would estimate that the differential would be \$100
25 million, approximately.

1 Q Can you describe for the Court what the \$100 million of
2 value leakage consists of?

3 A So of the \$100 million of value leakage, 20 million of
4 that would relate to the differential from the purchase
5 price perspective relating to Binance's upfront purchase
6 price consideration of \$20 million. The remaining \$80
7 million relates primarily to value leakage associated with
8 two components.

9 One would be estimated incremental value reduction
10 associated with VGX token and the lack of support from
11 Binance.US perspective and inability to potentially create
12 additional value for that token. That is a relatively small
13 component of the estimated \$80 million. The remaining
14 component relates to additional discounts that would likely
15 be associated with the liquidation of the 35 unsupported
16 tokens on Voyager platform.

17 Q Okay. I want to provide the Court with some more
18 detail on that than we received yesterday. So there was
19 discussion about what it meant for there to be 35
20 unsupported coins. Can you describe for the Court what that
21 means?

22 A Yeah. So the unsupported coins -- and again, this is
23 based on my understanding and discussions with the
24 management team of Voyager is that there are 35 tokens for
25 which the company's Bedrock code which is the foundation for

1 which the company uses in order to facilitate the withdrawal
2 and transfer of cryptocurrencies for customers, does not
3 support the protocols for those 35 tokens. So there's not a
4 an ability for that Bedrock code to be used in order to be
5 able to execute and facilitate the withdrawal of those
6 tokens into customers' wallets.

7 Historically, the company has never offered an ability
8 to withdraw those 35 tokens. They've always been done on a
9 basis whereby a customer would use cash on the platform to
10 acquire the token. Voyager would, through market maker
11 arrangements, acquire the token from market makers. It
12 would hold them in its own wallets and then to the extent of
13 a customer sought to withdraw, they would need to sell those
14 tokens into cash and the subsequent trade would occur on the
15 other end.

16 In addition to that, there are limitations from, for
17 example, an AML and KYC perspective that also enable the
18 ability for Voyager to appropriately comply with AML and KYT
19 procedures around the withdrawal of tokens and they utilize
20 third-party providers such as chain analysis to verify the
21 party and wallet address that that token is being sent to.
22 That functionality is not integrated into the platform
23 related to those 35 as well.

24 Q Can you describe for us what KYT is?

25 A Yeah, so it's a -- and I believe it's know your

1 transfer. It might be transaction, so I apologize if I have
2 that backwards. But generally, when people think of AML and
3 KYC, it relates to an onboarding process. KYT relates to
4 the sending of funds and so what that really ultimately
5 relates to is that the party, which is sending the funds, in
6 this case Voyager, knows the counterparty on the other end
7 of that transaction.

8 And the primary purpose of that is to make sure that
9 you're complying with federal regulations related to, for
10 example, not sending funds to North Korean wallets or
11 Iranian wallets. And so generally, what happens for
12 cryptocurrency platforms, given the ecosystem more broadly
13 and the ability to easily transfer funds to third-party
14 wallets is that there's a list of blacklisted wallets
15 effectively, through FinCEN for example, that publishes
16 that.

17 And so what these third party providers do is they
18 allow Voyager to make sure that they are not sending crypto
19 to parties that are banned in the United States from an AML
20 and KYC perspective. So it allows them to continue to
21 comply with federal law relating to the transfer of funds.

22 Q And is what you were saying that the -- with respect to
23 the unsupported coins, Voyager doesn't have the services in
24 place to do the KYT process?

25 A That is my understanding, and in part that relates to

1 the functionality of those third-party providers. Not all
2 of them support all of the tokens. So there are inherently
3 limitations around that and we understand that there are
4 limitations with the primary third-party verification
5 provider for those tokens that Voyager uses. They don't --
6 they are not supported.

7 Q So one of the customers asked us yesterday, what would
8 be necessary for Voyager to develop the internal capability
9 to be able to support the 35 unsupported tokens?

10 A So based on my discussions with management, my
11 understanding is that it would require developers to be
12 brought in in order to rewrite a large portion of the
13 Bedrock code to enable that system to be able to support
14 from a protocol perspective the actual ability to facilitate
15 those withdrawals.

16 It would also require the company to engage with other
17 third-party providers related to KYT wallet verification,
18 onboard those, integrate those into its platform.
19 Generally, my understanding is that it would take about 6 to
20 9 months -- this is what's been described to me -- to revise
21 the Bedrock code per protocol. I do imagine that some of
22 that could be done in parallel, but we do understand it to
23 be a lengthy process.

24 And what is not surprising in our minds, given the fact
25 that you would, you know, generally for a code update like

1 that want to do things like verifications and test
2 transactions, so it is -- we understand to be a very lengthy
3 and likely expensive procedure in order to be able to do
4 that.

5 Q Okay. Can you give us an order of magnitude of the
6 additional cost?

7 A I would imagine that it would likely be in easily the
8 single-digit millions, if not tens of millions. I don't
9 have a specific number, though.

10 Q Okay. So given this, in your opinion, is it realistic
11 if Voyager were to toggle to plan B and do the self-
12 liquidation for Voyager to also develop the capabilities to
13 distribute the 35 currently unsupported coins directly to
14 customers?

15 A I do not. I believe that the cost and time delay would
16 not merit the decision to pursue that.

17 Q Okay, so what happens to the 35 unsupported coins in
18 the toggle scenario?

19 A In the toggle scenario, the Debtor would in its best
20 efforts seek to liquidate those coins into cash and it would
21 liquidate those coins into cash using best efforts in order
22 to minimize any potential value leakage associated with it,
23 but it would likely involve the sale of that coin into the
24 market or via block trade transactions with third-party OTC
25 market makers.

1 Q And has the company gone out and gotten quotes for what
2 it would receive for those 35 unsupported tokens in that
3 scenario?

4 A It has We spoke with multiple market makers when
5 evaluating the toggle scenario in order to validate what we
6 believed appropriate discounts would ultimately be relating
7 to those tokens.

8 Q And what were the quotes that you got?

9 A They were very large. In many instances, they were 50
10 percent plus and we did speak with what we believe to be a
11 number of the largest market makers in both the traditional
12 finance as well as crypto market making capacity. In some
13 instances, they do both. But we did seek and receive quotes
14 from multiple parties.

15 Q Just so we're clear, you're talking about a 50 percent
16 discount?

17 A Fifty percent discount relative to the current prices,
18 yes.

19 Q Okay. So is the potential \$100 million in leakage
20 caused by a potential toggle the reason that the Debtors
21 have the Binance transaction as option A?

22 A Yes, among other things.

23 Q Okay. Has Voyager decided definitively today that it
24 will close the Binance transaction?

25 A No.

1 Q When will that decision be made?

2 A It would likely be made at a time three to four weeks
3 from approval of the plan in advance of a closing. We would
4 confer with our board of directors from an advisory
5 perspective. The advisors would also work together with the
6 UCC in consultation to make a determination and
7 recommendation on which path to ultimately move forward
8 with.

9 Q Okay. And I just want to be absolutely clear to all
10 the customers that are listening on the phone. Are you
11 ready, sitting here today, to tell the Court and customers
12 that for sure, if the Court confirms the plan, we're going
13 to be selling to Binance?

14 A Do you mind repeating the question again? Sorry.

15 Q Sure. I want -- sorry, maybe it was even unclear. I
16 just want to be absolutely clear for all the people that are
17 listening. Okay? Are you sitting here today telling the
18 Court and all of these customers that if the plan is
19 confirmed, we're going to be selling to Binance?

20 A No.

21 THE COURT: Just to be clear, Mr. Tichenor, that's
22 the current intent, but you have the right to change your
23 mind; is that essentially what you're saying?

24 THE WITNESS: What I'm saying, Your Honor, is that
25 we are continuing to do due diligence on Binance. At this

1 point in time, we would feel comfortable with the toggle
2 scenario. That obviously is a path that the Debtor has an
3 ability to fully control. But we do continue to do work
4 around Binance and there are, you know, for example,
5 allegations that are occurring in real time as early as this
6 morning that we continue to evaluate. We would continue to
7 evaluate in advance of any closing.

8 BY MR. SLADE:

9 Q Okay. So I want to step back and just describe for the
10 Court the diligence that you've done. And so can you just
11 describe for the Court what diligence have you done on
12 Binance.US?

13 A Yeah, so as outlined in my declaration, we have
14 reviewed audited financial statements from their 2021 audit.
15 We reviewed interim unaudited financial statements. We
16 reviewed their available liquidity. We reviewed various
17 party services agreements. We've reviewed their AML and KYC
18 procedures. We've had multiple discussions with them
19 relating to --

20 THE COURT: Slow down and repeat all those things.

21 THE WITNESS: Yes.

22 THE COURT: The 2021 audited financials, 2022
23 unaudited, did you say?

24 THE WITNESS: Yes, that's correct, Your Honor.

25 THE COURT: What else?

1 THE WITNESS: We also reviewed their available
2 funds and liquidity including a proof of funds.

3 THE COURT: Okay.

4 THE WITNESS: We reviewed related party services
5 agreements.

6 THE COURT: Okay.

7 THE WITNESS: We have reviewed their wallet
8 infrastructure. We had discussions with them relating to
9 that. And by saying reviewed, we have had discussions
10 relating to their wallet infrastructure and representations
11 have been made to us about it.

12 THE COURT: Okay.

13 THE WITNESS: Additionally, we reviewed their AML
14 and KYC procedures and manuals.

15 THE COURT: Okay.

16 THE WITNESS: Their money transmitter licensing
17 status.

18 THE COURT: Okay.

19 THE WITNESS: Business plans that they had
20 submitted to selected states in connection with MTL
21 approvals.

22 THE COURT: Okay.

23 THE WITNESS: Additionally, above and beyond that,
24 we have reviewed information independently relating to some
25 of their public wallets and we continue to have discussions

1 with them relating to a range of factors around risks
2 associated with Binance.US as a potential counterparty.

3 THE COURT: Thank you.

4 BY MR. SLADE:

5 Q Can you tell the Court just approximately how many
6 meetings and phone calls you have doing diligence about
7 Binance.US?

8 A It would be dozens over a multi-month period.

9 Q You said you reviewed proof of funds. What was that
10 specifically that you received from them?

11 A We received a bank statement from them.

12 Q This -- you mentioned you got audited financial
13 statements from 2021. This also came up in hearing
14 yesterday. Do you know if Binance has an auditor?

15 A They've made representations to us that they do have a
16 new auditor. Yes.

17 Q Okay. This also came up yesterday. Does Binance to
18 your knowledge have a fiat banking relationship?

19 A Yes.

20 Q Okay. So I want to ask you this question for your
21 understanding based on the diligence you've done of
22 Binance.US, okay? It's a series of questions with that
23 premise. Okay? Does Binance.US maintain digital assets on
24 a one-to-one reserve basis?

25 A Yes.

1 Q Does Binance.US hold customer assets solely in a
2 custodial capacity?

3 A Yes.

4 Q Who can move and transfer crypto assets away from the
5 Binance.US platform?

6 A Only Binance.com -- excuse me, Binance.US employees.

7 Q Got it. All right. Does Binance.US lend or
8 rehypothecate customer asset?

9 A No.

10 Q Have you seen Binance.US organizational charts?

11 A I have.

12 Q Where is Binance.US incorporated?

13 A In Delaware with a headquarters in Palo Alto.

14 Q Who owns Binance.US?

15 A We understand it to be 20 percent owned by Series A
16 seen investors and 80 percent owned through an ultimate
17 owner CZ.

18 Q Do you have an understanding of Binance.US' security
19 protocols?

20 A Yes.

21 Q Can you just describe that as a high level for the
22 Court?

23 A Yes. So we reviewed security protocols relating to
24 documents that were provided to us, for example, relating to
25 their ISO 27001 standards which relate to general IT

1 security protocols. We also reviewed a third-party audit
2 relating to SOC 2 compliance, which relates to protection of
3 underlying customer funds from an IT security perspective.
4 And then from a wallet infrastructure perspective, we've had
5 multiple discussions with them relating to where, for
6 example, private keys are stored, the ability to move funds,
7 who has authorization to be able to move funds, how
8 transfers work. So we've had a number of discussions with
9 them relating to that.

10 Q Okay. And the Court asked this question yesterday. I
11 just want to pose it directly to you. Are their safeguards
12 to prevent crypto from being taken off the Binance.US
13 platform?

14 A That is my understanding, yes.

15 Q Okay. Do you understand where the keys to crypto at
16 Binance.US are held?

17 A I do.

18 Q And what can you say publicly about that?

19 A So we are bound by confidentiality. We do take some of
20 the key elements very seriously relating to privacy concerns
21 around that. We understand the keys to be held at
22 enterprise grade cloud storage facilities that in -- for the
23 majority of those keys are at a level that would meet
24 military grade standards.

25 Q Are you familiar with the facilities at which these

1 keys are held?

2 A I'm aware of the facilities, yes.

3 Q Okay, just so we're clear, have you visited that?

4 A I have not.

5 Q All right. So all that said, are there aspects of
6 Binance.US' business that you are still doing diligence on?

7 A Yes.

8 Q What are the issues you continue to track?

9 A So for example, you know, as I think we outlined in our
10 -- in the declaration, we have had discussions with
11 Binance.US as early as Wednesday. There was a large meeting
12 with both Moelis and various other advisors relating to
13 Binance.US' relationship with Merit Peak and allegations
14 that were made relating to a Reuters article that was
15 published.

16 For example, our understanding based on information
17 that was provided to us relating to that, we don't believe
18 that for example, there was any comingling of customer
19 funds. So for example, we understood that deposits relative
20 to withdrawals were effectively on one-for-one basis and so
21 therefore there wasn't any inappropriate withdrawals of
22 underlying customer funds. But that is an item, for
23 example, that we continue to do due diligence on.

24 Q Okay. Are there any other items you're tracking?

25 A Yes. So after the hearing yesterday, we became aware

1 of a letter that was sent to Binance.US and CZ from three
2 senators including Elizabeth Warren relating to allegations
3 that, you know, would largely seemed to reflect articles
4 from Reuters. That said, this came out last night and we
5 are actively engaging in and having discussions and we had
6 discussions minutes leading up to the hearing this morning
7 with Binance around that and we'll continue to have
8 discussions with them post this hearing relating to that.

9 Q And speaking of this morning, did you see CZ's tweet
10 from this morning?

11 A I did.

12 Q All right. What was your reaction?

13 THE COURT: Somebody tell me what it is.

14 MR. SLADE: We can provide it to the Court. There
15 were -- there are --

16 THE COURT: -- the witness first, tell me what it
17 is.

18 MR. SLADE: Sure.

19 THE COURT: Tell me his reaction.

20 MR. SLADE: I apologize.

21 THE COURT: His reaction's going to mean nothing
22 to me if I don't know what it was.

23 MR. SLADE: Totally fair, Your Honor.

24 BY MR. SLADE:

25 Q Just describe the tweet for the Court.

1 A I don't recall the exact words that were used, but CZ
2 had tweeted in a reply to an article relating to this exact
3 hearing around the Voyager, Binance.US transaction what
4 seemed to be concerns around potentially pulling out of
5 either the U.S. or the transaction more broadly.

6 Q Okay. And was there a follow-up tweet?

7 A There was. That's my understanding, yes.

8 Q And what was the follow-up tweet?

9 A That they were still very interested in moving forward
10 with the deal as is and that the tweet didn't relate to the
11 specific transaction.

12 Q Okay. So just so we're clear, Mr. Tichenor, if the
13 Court confirms the plan, how will the decision be made
14 between closing of the -- between either closing the Binance
15 transaction or toggling to the self-liquidation option?

16 A So the decision will be made among the advisors
17 ultimately making a recommendation, and that would include
18 Moelis, Kirkland, BRG on the Debtors' side having a
19 discussion ultimately with the board of directors and the
20 special committee to determine which appropriate path would
21 be made on a go-forward basis. We would make that
22 recommendation in consultation with the UCC and its various
23 advisors including McDermott and FTI. And ultimately, the
24 determination would likely be made relating to whether it
25 was the appropriate path on a risk adjusted basis to

1 continue to move forward with.

2 Q Okay. Well, wherever we are, Mr. Tichenor, why not
3 just toggle now, given what you are talking about, the
4 concerns of the regulators and the Merit Peak issue and the
5 issues you're still dealing with and the media reports and
6 congressional letters and the tweets? Why not just toggle
7 now?

8 A Because based on our analysis, the Binance transaction
9 potentially provides up to an incremental \$100 million of
10 additional value for customers which we view as being
11 material. In addition, you know, we do believe that it's
12 like a potentially faster path for customers being able to
13 recover funds as well, just given logistical and operational
14 elements of executing on a self-liquidating toggle.

15 MR. SLADE: That's all, Your Honor. Thank you.
16 Pass the witness.

17 THE COURT: All right. Is there anybody here in
18 the courtroom who wishes to cross examine Mr. Tichenor?

19 MR. BRUH: Your Honor.

20 THE COURT: Yes, Mr. Bruh.

21 MR. BRUH: Thank you. Mark Bruh for the United
22 States Trustee.

23 CROSS EXAMINATION OF BRIAN TICHENOR

24 BY MR. BRUH:

25 Q Good morning, Mr. Tichenor. I just have a couple of

1 quick questions for you. You spoke about the letter by the
2 three U.S. senators to Changpeng Zhao -- CZ, that is -- and
3 Binance.US and you kind of gave a broad brush as to what
4 that letter is about. Isn't it correct that the letter
5 deals with respect to potential sanctions evasion, money
6 laundering, and unlicensed money transmission?

7 A I don't recall the exact specifics. I apologize. We
8 were reading this very late last night. But that's my
9 understanding, yes.

10 Q Okay. And did you or your team look into this at all,
11 those issues?

12 A We looked into a number of issues as I think I outlined
13 relating to Binance.US' specific AML and KYC procedures.
14 For example, we have had multiple discussions with them. We
15 have performed extensive diligence in part relating to a lot
16 of the allegations that were outlined in various Reuters
17 articles, but I can't speak to, for example, elements of
18 Binance.com as a counterparty. That would not be within our
19 scope of diligence.

20 Q Today, you spoke about that the -- in the event the
21 Debtors toggle, that the plan -- the sale to Binance, it
22 would be \$100 million difference; is that right?

23 A That was the estimate, yes.

24 Q Yes. But yesterday, Mr. Renzi testified that the \$20
25 million infusion by Binance would only be about a 1 percent

1 increase to customers and then -- isn't that right?

2 A That's my recollection, Mr. Renzi's testimony
3 yesterday, yes.

4 Q And then he further testified based upon certain
5 questions by the pro se customers than in actuality, that 1
6 percent would be less when you take into account the
7 administrative costs incurred by the estate; isn't that
8 right?

9 MR. SLADE: Your Honor, I would object. I don't
10 think that's what he said.

11 THE COURT: I don't think it is either, so I'll
12 sustain the objection.

13 BY MR. BRUH:

14 Q Can you just explain how you come to the \$100 million
15 number as opposed to the 1 percent number for me?

16 MR. SLADE: I object. I don't think those are the
17 same things. You can answer the question.

18 BY MR. BRUH:

19 A Yesh, so as I think I previously stated, the components
20 of the \$100 million -- approximate, again, \$100 million
21 differential because it does move in real time --

22 Q I understand.

23 A -- were that it was \$20 million relating to the up-
24 front purchase price consideration with the remaining 80
25 million, so out of 100, you know, less the 20, of the

1 remaining 80 million, my recollection was that approximately
2 20 million of that was relating to an estimated incremental
3 reduction in value associated with VGX as a specific token
4 with the remaining portion of that being 60 million relating
5 to liquidity discounts associated with the full liquidation
6 of 35 tokens which cannot be returned to customers on an in-
7 kind basis through the Voyager platform.

8 MR. BRUH: Okay. I have no further questions.
9 Thank you.

10 THE COURT: Anybody else who's here who wishes to
11 cross examine Mr. Tichenor?

12 MR. EVANS: Your Honor, Joe Evans from the UCC.
13 If possible, if the creditors on the line have questions,
14 I'd like them to go first so we can follow up, or we can go
15 now if you prefer.

16 THE COURT: All right, well before we go to the
17 people on the line, is there anybody other than the
18 Committee who has questions that they wish to ask.

19 MR. UPTEGROVE: Yes, Your Honor.

20 THE COURT: Hang on one second. We have not quite
21 --

22 MR. UPTEGROVE: Yes, Your Honor.

23 THE COURT: -- the telephone yet. Anybody else
24 here in the courtroom? All right, anybody on the telephone
25 who wishes to ask questions?

1 MR. UPTEGROVE: Yes, Your Honor. William
2 Uptegrove on behalf of the United States Securities and
3 Exchange Commission.

4 THE COURT: Okay.

5 CROSS EXAMINATION OF BRIAN TICHENOR

6 BY MR. UPTEGROVE:

7 Q Good morning, Mr. Tichenor. I'd like to ask you some
8 questions about the safeguards for protecting customer
9 assets once those assets have been transferred to the
10 Binance.US platform. You've already testified some about
11 that. What specific role did you have in the Debtors' due
12 diligence of Binance.US?

13 A So I'm an investment banker to Voyager and my specific
14 involvement was participation in various discussions and
15 meetings with Binance.US relating to the diligence. I was
16 also involved in, for example, preparation of diligence
17 questions in connection with that work.

18 Q Anything else?

19 A I'm not sure I follow the question.

20 Q Any other part -- with respect to your role, is there
21 anything else that you did in connection with the due
22 diligence of Binance.US?

23 A I believe we outlined the work that we had done
24 previously. You know, we've had multiple discussions with
25 them. No. I mean, I think I stated previously the work

1 that we have performed.

2 Q Presumably it was part of a team. Who overall was
3 responsible for conducting the Debtors' due diligence?

4 A It would be -- I am a member of our team at Moelis.
5 I'm one of several individuals, so it would include myself
6 and many others that are also on the Moelis team in addition
7 to myself. It also included K&E, for example, as counsel to
8 the Debtor. It included BRG who is the financial advisor to
9 the Debtor. You know, we have done this diligence in
10 connection with the UCC's advisors, for example.

11 So as I mentioned, I think previously, for example, the
12 Merit Peak review that we had on Wednesday, I was unable to
13 physically participate in that. We did have representatives
14 from Moelis at that meeting, but it included representatives
15 from all of the firms that I listed, including, you know,
16 the UCC's advisors. So it's not just a Moelis-specific
17 diligence effort.

18 Q Is there anybody on the Moelis team that has a
19 background in crypto asset security?

20 A In which context? From a legal perspective? I'm
21 sorry. I don't follow the nature of the question.

22 Q No, in a technical capacity. So you know, whether or
23 not the crypto assets are safely custodied on the platform
24 and access issues and keys all of that stuff, in a technical
25 way. Is there somebody on the Moelis team that had that

1 type of expertise?

2 A We have individuals on the team that for example, focus
3 specifically on the cryptocurrency sector. That is an
4 industry group that from a firm perspective we do coverage
5 work on. But to be clear, Moelis is an investment bank. We
6 are not a consultancy group relating to, for example, you
7 know, what would be appropriate from an IT or custody
8 protocol perspective. We don't do code reviews, for
9 example. We do work that is in line with what scope and
10 services investment bankers typically perform.

11 Q So the answer is no?

12 A Yeah, I would say the answer would be no.

13 Q Is there anyone else on the Debtors' due diligence team
14 that has that type of technical expertise?

15 A Not to my knowledge.

16 Q With respect to the nature of the wallet infrastructure
17 and safeguards, did you personally review any specific
18 documents?

19 A I personally reviewed, I would say, several documents.
20 The two documents that I think I previously mentioned, which
21 were the ISO 27001 certificate and audit report. That's a
22 certification that's performed by a third-party firm. We
23 also reviewed their SOC 2 compliance report. Additionally,
24 too, we did receive sworn statements from company officers
25 relating to a number of these elements from a consideration

1 perspective that we would view as being critical and kind of
2 foundational from a safeguard perspective.

3 Q I'm sorry, said there was the ISO certificate and then
4 what was the next thing that you reviewed?

5 A A SOC 2 audit.

6 Q That like sock, like you put on your feet?

7 A It's S as in Sam, O as in orange, and C as in car.

8 Q And then, so is the ISO certificate, the SOC 2
9 compliance, there was an audit, too, right, a third-party
10 audit?

11 A We did. We reviewed their third-party 2021 audit --
12 audited financials.

13 Q So the third-party audit was of financials. Was there
14 an audit done of the internal controls and safeguards over
15 crypto assets?

16 A I don't recall personally reviewing any documents
17 relating to, for example, like an internal control report.
18 I do know we received representations relating to, you know,
19 internal controls and procedures, you know, being in line
20 with leading industry standards, for example, but I didn't
21 personally review any documents related to that, no.

22 Q So just to be clear, when you say that you reviewed a
23 third-party audit, you're talking about the audit of the
24 financials: balance sheet, income statement, statement of
25 cash flows?

1 A So when I was speaking of the audits, there were three
2 types of audits. One would be the financial audit, which is
3 one that you would be referring to. Additionally, the ISO
4 and SOC 2 reports are both technically audits. They're
5 audits from a information security perspective and they are
6 performed by third-party firms.

7 Q Got you. So that leads to my next question. Can you
8 elaborate a little bit more about what ISO is, who performs
9 it, what it entails, what the steps are, and what would be -
10 - well, break that down. First, who conducted the ISO
11 audit?

12 A I don't recall the exact firm.

13 Q Do you recall whether it's a household name or somebody
14 you'd have to google?

15 A It was not a name that I'm familiar with, but I'm not
16 as familiar with reviewing ISO audits generally speaking, so
17 I can't speak to the nature of whether that's a well-known
18 firm, for example, that performs that type of audit.

19 Q Do you have a sense of their technical capacity and
20 certification and experience in this area?

21 A I think I answered that. I can't speak to that.

22 Q Do you know whether it has two employees or two hundred
23 employees?

24 A I don't recall.

25 Q What was the main finding of the ISO report?

1 A That they were in compliance with the ISO 27001
2 standards which I understand to relate to ISO being a third-
3 party International Standards Organization and my
4 understanding -- and again, this is -- you know, we are
5 investment bankers. This is outside of our normal scope of
6 services. My understanding is that they were in compliance
7 with these standards which relate primarily to IT security
8 protocols and best practices, procedures.

9 Q Yeah. I'm a lawyer, so if someone gave me a ISO
10 certificate, I wouldn't know, you know, heads or tails of
11 it. Who did -- so I understand, who did the Debtor give it
12 to that -- let me rephrase that. Who on the Debtors' team
13 reviewed the ISO certificate that had adequate industry and
14 technical expertise to opine on whether it was a sufficient
15 and adequate review of the Binance security protocols?

16 A I don't believe that there was any -- I don't know the
17 answer.

18 Q So as far as you know, no one with adequate knowledge
19 on the Debtors' team reviewed ISO report?

20 A I can't speak to, for example, whether there was an
21 individual at BRG, which would be appropriate, you know,
22 from that perspective. But from the Moelis perspective, I
23 can speak to what I know from us as a firm.

24 Q What does this SOC 2 -- is it a report?

25 A It's similar to a compliance certificate from a third-

1 party auditor relating to their compliance with SOC 2
2 standards.

3 Q How is it different than the ISO certificate?

4 A My understanding is that ISO is a separate
5 organization. SOC, I believe, relates to ISCPA standards
6 relating to the privacy or the custody and protection of
7 customer privacy information as a financial services banker.
8 For example, this is something that typically comes up in
9 the context of M&A transactions when dealing with financial
10 services organizations that deal with the protection of
11 customer PII.

12 It's -- my understanding is it's an industry and
13 worldwide recognized standard relating to the protection of
14 customer PII and the safeguarding of such.

15 Q You might have said it there and I apologize, but are
16 there differences between the ISO and SOC 2 reports or
17 certification?

18 A I believe there are.

19 Q What are they?

20 A Excuse me, I didn't hear that.

21 THE COURT: What are they?

22 BY MR. UPTEGROVE:

23 A Oh, what are they? My recollection is that one relates
24 to general IT security protocols and standards. The other
25 relates specifically to safeguards relating to the

1 protection of customer PII specifically.

2 Q What was the conclusion of the SOC 2 report?

3 A That they met the standards.

4 Q Were there any exceptions?

5 A I don't recall.

6 Q (indiscernible). How long is the SOC 2 report?

7 A I don't recall. I read it a couple weeks ago.

8 Q Two pages, 200 pages?

9 A I don't know. I don't recall it being --

10 Q Who on the Debtor --

11 A -- two pages. I remember it being longer than that,
12 but I don't know how long.

13 Q Do you remember how long it took you to review it?

14 A I read it an afternoon. I don't recall it being 200
15 pages. I don't recall it being two pages.

16 Q You read it in an afternoon, as you read it during the
17 afternoon or you read it, it took you (audio drops)
18 afternoon?

19 A I read it during an afternoon.

20 Q Was there anyone on the Debtors' team who reviewed the
21 SOC 2 report that had adequate technical experience and
22 expertise to verify what was in the report?

23 A I can't speak to that, and candidly, I don't even think
24 as an investment banker I would be in a position to
25 determine who even would be, given my knowledge of, you

1 know, these reports and industry standards.

2 Q You mentioned previously in your testimony that there
3 were multiple discussions with people at Binance, correct?

4 A Correct.

5 Q And those discussions touched on the issues of asset
6 security and wallet infrastructure, right?

7 A That's correct.

8 Q And did those discussions involve people on the
9 Debtors' side other than Moelis people?

10 A I believe so. I don't --

11 Q Who were those people?

12 A -- specifically. I believe BRG --

13 Q -- a financial -- was that a financial advisor, right?
14 I'm sorry.

15 A Go ahead. I know I recall at least one discussion that
16 involved K&E. We also had discussions with, for example,
17 management relating to, you know, what we learned during
18 those discussions to determine at least in their judgment
19 whether or not what was being presented to us made sense and
20 met industry standards, for example.

21 Q And in those discussions with people from management
22 and other advisors to the Debtor, was there anyone in those
23 meetings who had adequate technical expertise and experience
24 to opine or ask questions about the SOC 2 or ISO
25 certificates or reports?

1 THE COURT: That's the third or fourth time you
2 vaguely asked about people with adequate technical
3 experience. I'm going to stop it because I don't know what
4 it means. You know, presumably you get an audited report
5 from somebody who has adequate technical experience, so what
6 are you asking? Did you have another auditor review this
7 audit? Or are you saying, you know, like did you have
8 another financial auditor review the financial audited
9 statements? So I don't really know what you're asking. So
10 you've got to be more clear, because otherwise it's not
11 helpful to me.

12 MR. UPTEGROVE: Understood.

13 BY MR. UPTEGROVE:

14 Q Mr. Tichenor, you had previously testified that there
15 was -- strike that. So when there was discussions among
16 management and the Debtors' advisors regarding crypto asset
17 security and wallet infrastructure issues, how many of those
18 meetings have there been? Let me rephrase that. Sorry,
19 strike that. How many meetings have there been regarding
20 issues of asset security and wallet infrastructure at
21 Binance.US --

22 A I would say --

23 Q -- among the Debtor and its advisors?

24 A Numerous. I can't give you an exact number, but it's
25 something that in light of everything going on from a market

1 perspective was top of mind for us from a diligence
2 perspective.

3 Q From the Debtors' perspective, who is typically present
4 at those meetings (audio drops) typical?

5 MR. SLADE: Your Honor, can I lodge a brief
6 objection? I guess I'm concerned that these questions are
7 not being asked as being relevant to this proceeding, as
8 opposed to additional proceedings that the questioner is
9 anticipating bringing later. Seems -- this seems
10 irrelevant.

11 THE COURT: Overruled. You can answer.

12 BY MR. UPTEGROVE:

13 A My -- excuse me, do you mind repeating the question
14 again?

15 Q Sure. Just to the extent there was a typical
16 representation, what was the typical representation on the
17 Debtors' side for the meetings relating to discussions on
18 crypto assets, security, and wallet infrastructure?

19 A Generally, I believe it involved myself, others from
20 Moelis, and then in certain instances, other advisors that
21 have been advising both the Debtor and the UCC. And I know
22 we've had discussions with the UCC for -- the UCC's
23 advisors, for example, relating to these dynamics. We also
24 had discussions with our board of directors relating to this
25 and presented findings under confidentiality relating to

1 what we had learned during those discussions and discussions
2 with our board.

3 Q At those discussions, was there anyone that you would
4 term a technical expert on issues of wallet infrastructure
5 or the security of crypto assets?

6 A There would be members from, for example, the Voyager
7 management team that operate a crypto exchange and would be
8 familiar with those.

9 Q What about the advisors?

10 A If you're asking if we had any specific technical
11 advisors relating to these dynamics that focus specifically
12 on code reviews or technical elements, we did not hire an
13 additional external advisor relating to that, no. Or the
14 Debtor did not engage on.

15 Q And you said -- I'm sorry.

16 A If that's the question that you're asking.

17 Q When you say, who were the Voyager management people
18 you're referring to in this instance?

19 A So for example, the CEO Steve Ehrlich.

20 Q Anyone else?

21 A I'm sure that there were others on those meetings. I
22 don't recall specifically, at any specific instance.

23 Q Do you happen to know whether Mr. Ehrlich has technical
24 expertise in wallet infrastructure and crypto asset
25 security?

1 A I think he's familiar with what our industry protocols
2 and standards, which was the basis for the discussion
3 largely relating to the ability of any single individual,
4 for example, to move funds or how structurally, for example,
5 like a hot wallet/cold wallet structure would work.

6 Q Was Moelis engaged by the Debtor to assess the
7 safeguards Binance.US has in place for crypto assets?

8 A No.

9 Q In Paragraph 23 of your declaration, you state Moelis
10 is not a technical expert on matters relating to the
11 appropriateness of information security or other custody
12 protocols. Can you explain what you mean by that?

13 A Moelis is a investment bank. The work that we
14 generally perform is consistent with investment banks. It
15 relates to financial analysis. It relates to the financial
16 capacity generally of the counterparty. It would relate to
17 valuation, for example, but as an investment bank, we are
18 not technical experts in the sense of a third-party
19 consultancy group, for example, that oftentimes, you know,
20 we'll see engaged in certain situations M&A situations that
21 we'll perform, for example, technical reviews. That's not
22 inside of the scope of services of Moelis and I don't
23 pretend to be an expert on a code review, for example.

24 Q Did anyone at Moelis conduct any assessment or audit of
25 the safeguards Binance.US has in place over customer crypto

1 assets?

2 A I think I just answered that question. I -- you know,
3 as an investment bank, look, we sought to perform
4 incremental reviews on things that we believed would be
5 important from a counterparty perspective. We sought to get
6 assurances from the counterparty relating to such, including
7 sworn statements around those facts. But, you know, I
8 wouldn't characterize anybody at Moelis as being an expert
9 in that sense. It's not what we do as a firm.

10 Q Are you familiar with something called Binance.com?

11 A I am.

12 Q What's the relationship between Binance.US and
13 Binance.com?

14 A My understanding is, and representations have been made
15 to us, are that there are several commercial agreements
16 between the two entities and that they share a common UBL in
17 CZ.

18 Q Does anyone -- I think you testified about this, but I
19 just want to make it clear. Does anyone from Binance.com or
20 its affiliates have access to the wallets or keys of
21 Binance.US customers?

22 A What's been represented to us is that only Binance.US
23 employees are able to move or transfer crypto and that
24 Binance.com employees don't have the ability to access keys.

25 Q A famous President once said, "Trust but verify." Or I

1 should say, a President famously said once, "Trust but
2 verify." What did -- what if anything did Moelis do to
3 verify those representations?

4 A We had discussions with them. We've had numerous
5 discussions with them. We sought to get sworn statements
6 relating to that. You know, but again, like we don't do,
7 for example, like a code review as I think Mr. Slade
8 mentioned. You know, we didn't visit on site, for example,
9 the enterprise storage facility that the keys are hosted at.
10 We sought to get assurances above and beyond typically what
11 we would do in a transaction like this, perform counterparty
12 due indulgence, but it would be difficult for me to even say
13 how to perform a independent verification the way that
14 you're describing.

15 Q I think you previously testified that it's your
16 understanding that Binance.com or affiliates of Binance.US
17 do not have the ability to transfer crypto assets on the
18 Binance.US platform; is that right?

19 A Yes, I believe they don't have the ability to move or
20 transfer funds. That's my understanding.

21 Q Did Moelis or the Debtor do anything to verify that
22 other than getting representation?

23 A Are you asking if we did like tests, for example, or
24 internal reviews? I'm not sure I understand the nature --

25 Q Any -- just anything. Just anything other than

1 representations.

2 A We sought to get representations. That was the work
3 that we did.

4 Q There was an earlier purchase agreement in this case
5 with FTX, correct?

6 A There was.

7 Q And you stated in your declaration that FTX and its
8 affiliates unexpectedly collapsed shortly after the Court
9 approved the purchase agreement; is that right?

10 A That's correct.

11 Q What did you mean by unexpected there?

12 A I believe everybody found the FTX bankruptcy to be
13 unexpected. It occurred over a very short period of time
14 and it subsequently turned out to be, from what we
15 understand, a fraud of historical proportions.

16 Q The Debtors conducted due diligence in connection with
17 the FTX transaction, correct?

18 MR. SLADE: Your Honor, can I object? Again, this
19 is not relevant. This is the past and not relevant to
20 what's happening today.

21 THE COURT: I'll allow it. Go ahead.

22 BY MR. UPTEGROVE:

23 A So we conducted diligence that is traditional in nature
24 relating to entering into a transaction in a bankruptcy
25 proceeding that includes, for example, reviews of their

1 ability and financial capacity to be able to close a
2 transaction. We had multiple discussions with management.
3 We received assurances from their advisors including their
4 counsel, S&C. We were aware and listened to, for example,
5 testimony that their CEO made in front of Congressional
6 hearings attesting to the fact that they safeguarded assets
7 and that customers have rights and title to assets. We
8 reviewed, for example, their terms of service related to
9 such. So, you know, that was the nature of diligence that
10 we performed. And we were aware of many of the investors
11 that were in their business as well and had discussions with
12 them about FTX.

13 Q As part of its due diligence, did the Debtor identify
14 any of the problems that ultimately led to FTX's, as you
15 characterized it, collapse?

16 MR. SLADE: Your Honor, I'll object. That's not
17 relevant here.

18 THE COURT: I'll allow it.

19 BY MR. UPTEGROVE:

20 A So generally speaking, to the extent that somebody is
21 performing a fraud that, let's say, is \$50 million, there's
22 a balance sheet gap of something of that size, that's
23 something that can be, you know, oftentimes potentially a
24 failure from a diligence perspective. As we understand it,
25 the balance sheet hole and theft of funds relating to FTX is

1 close to \$9 billion. The only way to perpetuate a fraud of
2 that scale is through widespread and consistent failure from
3 a primary perspective to provide false statements and
4 assurances. You can't perpetuate fraud of that scale just
5 by you know, a one-off issue, for example. It inherently
6 has to be widespread.

7 Q So the answer is no.

8 A In that instance, no. Yeah.

9 Q What if anything has the Debtor done -- the Debtors
10 done differently during the due diligence in the Binance.US
11 transaction?

12 A So in light of what happened with FTX and generally,
13 what was going on with the industry more broadly and
14 concerns relating to any counterparty -- and to be clear,
15 this isn't just a Binance.US specific issue. This related
16 to work that we were performing on various parties that
17 sought to engage with the Debtor post the collapse of FTX
18 around a potential transaction. We sought to review their
19 financial capacity and ability to operate as an ongoing
20 business.

21 We asked some questions around the nature of their
22 operations and assurances that they had previously given to
23 us around the fact that they hold, for example, reserves
24 only on one-for-one basis. We asked for additional
25 verification relating to the fact that they don't

1 rehypothecate any assets. We looked at their website. We
2 asked numerous questions.

3 We performed multiple, multiple meetings and diligence
4 sessions with them to understand and seek to understand
5 facts around the way that they operate their business to
6 identify areas that we understood to have caused issues in
7 other crypto-related bankruptcy situations and that tend to
8 be cause for you know, these types of failures.

9 Q So I'm not clear, Mr. Tichenor. Did you not look at
10 the website and have multiple meetings in the FTX
11 transaction? What's different -- let me let you answer that
12 question, sorry. I'll rephrase it. Strike that. So the
13 Debtors not have some of those things like meetings and
14 review websites in the FTX transaction?

15 A We did. I would characterize the scope of the
16 diligence as being broader in this instance. We, you know,
17 had multiple meetings with them. We -- and we had multiple
18 meetings with FTX as well, right? But I would just
19 characterize the breadth and duration and scope of the
20 diligence as being much higher.

21 Q How so?

22 A So we asked for walk throughs, for example, of wallet
23 infrastructure relating to how assets are custodied and, you
24 know, seeking additional assurances. We sought a sworn
25 statement from the company relating to this. We didn't do

1 that in FTX.

2 Q That's what I'm looking for. So you got in the context
3 of Binance.US, you got sworn statements from Binance.US
4 personnel; is that right?

5 A That's correct.

6 Q You didn't previously do that in FTX. That right?

7 A That's correct and that's uncommon in the context of
8 any M&A or restructuring related situation to get those
9 types of sworn statements. Be highly --

10 Q What other --

11 A -- unusual.

12 Q Understood. Other than that, what other specific steps
13 did the Debtor take that it didn't previously take in the
14 FTX transaction?

15 A I think the other incremental steps that we took were
16 to ensure from, for example, an APA perspective that to the
17 extent that there were transfers of crypto that we were
18 ensuring that customers, for example, were already signed up
19 to the Binance.US platform. They would already be customers
20 of it. You know, we were not planning to, for example,
21 transfer the crypto in a manner and you know, the
22 protections that were built in around this, to ensure that
23 to the extent there was, you know, widescale fraud, for
24 example, that was being perpetuated that the Debtor itself
25 wasn't exposed on that interim basis in a way that it would

1 have been in the FTX transaction.

2 Q Any other, you called them incremental steps that the
3 Debtor took in connection with the due diligence of
4 Binance.US that it didn't take with FTX?

5 A I -- we've discussed a lot of them. I don't recall
6 anything else. I'm sure there was. I just don't recall
7 anything else off the top of my head.

8 Q So slightly pivoting to a related subject, in Paragraph
9 32 of your declaration, you discuss certain supplemental
10 diligence and I think you sort of seem to -- well, you
11 touched on it a little bit today. When did the supplemental
12 due diligence begin?

13 A I would characterize the -- so do you mind, I'm going
14 to turn to this. This relates to the Merit Peak work.

15 Q Okay.

16 A Is that the right paragraph?

17 THE COURT: Yes.

18 BY MR. UPTEGROVE:

19 Q All right, I don't -- turn to it. Paragraph -- it's
20 Paragraph 32.

21 A So yes, I'm looking at that now. So the supplemental
22 due diligence related to, you know, upon the publication of
23 the Reuters article relating to, you know, a perceived
24 relationship between Merit Peak and Binance, in particular
25 Binance.com and CZ and Binance.US, upon seeing that, we

1 reached out to Binance.US and its advisors. We scheduled
2 diligence conversations to engage with them and a better
3 understanding of the nature of the allegations, as I think
4 outlined -- and that included multiple telephonic and Zoom
5 meetings as well as in person meetings relating to reviews
6 of trade data.

7 And to be clear, this was not a -- just a Moelis set of
8 supplemental diligence. This included meetings of Moelis,
9 Kirkland, BRG, FTI, McDermott all participated in to review
10 enhanced documentation around the nature of the relationship
11 and in particular with regards to the allegations that were
12 made, you know, the concern would be that to the extent that
13 there was a withdrawal of, for example, customer funds that
14 would obviously be very concerning from the Debtors'
15 perspective.

16 And so the diligence that we performed and information
17 that we received, you know, largely seemed to indicate that
18 the flow of funds relating to these transactions were on
19 offsetting basis. So in this context, it would be, you
20 know, a market maker depositing value on a platform and then
21 withdrawing cash on the back end. We understand that to be
22 in the typical scope of what market makers do. But I want
23 to be clear, this isn't a -- you know, we're not done with
24 our diligence on this. We continue to do diligence. We had
25 a meeting with them Wednesday and had the hearing Thursday.

1 We'll continue to have discussions with them and as I
2 think I said, we have a plan that allows for a toggle
3 approach. We will not -- we will confer and seek to review
4 and make sure that parties are comfortable prior to
5 executing any transaction and to the extent that we're not,
6 we would seek to execute the toggle that the plan allows
7 for.

8 Q When did that Merit Peak article come out? Do you
9 remember roughly?

10 A I don't. I think it was February 16th, is what it
11 seems to be.

12 Q The -- what's dubbed in your declaration as the
13 supplemental due diligence would have started February 16th
14 or shortly thereafter?

15 A Yeah, as it relates to the specific item, that's
16 correct.

17 Q Was there something else that -- was there other
18 ongoing due diligence at that time?

19 A We were performing and can continue to have
20 conversations with Binance over the course of -- from when
21 we began in discussions with them post the collapse of FTX
22 through as early as I think 9:55 this morning.

23 Q As of February 16th, or thereabouts -- or excuse me,
24 let me rephrase that. Before February 16th, what was left
25 in regard to the due diligence in the -- for the Binance

1 transaction?

2 A Are you asking, is there specific open due diligence
3 items prior to February 16th? I'm not sure I understand --

4 Q Correct.

5 A I don't recall specifics. I know that there were, I
6 just don't recall specific items.

7 Q Regarding the supplemental -- excuse me, the
8 supplemental due diligence that's now ongoing, what's the
9 scope of that due diligence?

10 A I think it would largely relate to, for example, you
11 know, continued work relating to the Merit Peak allegations.
12 We need to receive, I think we're still waiting on the
13 audited year-end financial statements, for example. We will
14 continue to and are seeking to have a discussion with the
15 company relating to the letter that was put forward
16 yesterday by the three senators.

17 We will need to have additional discussions relating to
18 the tweets that were put out this morning by CZ and we will
19 continue to evaluate various articles and news publications.
20 And you know, any allegations that remain with -- to the
21 extent that there are additional allegations, we'll continue
22 to make sure that we get assurances relating to any
23 allegations that are made around the nature of the
24 operations. And then I think we would also seek --

25 Q What about current ongoing due diligence --

1 A -- to do kind of bring-down due diligence session ahead
2 of any closing.

3 Q I'm sorry, what is a bring-down due diligence or
4 whatever -- what'd' you call it?

5 A A bring-down due diligence. So this is oftentimes an
6 analysis that is done in connection with, for example,
7 public M&A transaction or a general M&A transaction where
8 the advisors will have a discussion with the counterparty
9 relating to assurances of a range of factors, for example.

10 So oftentimes the bring-down due diligence will include
11 basically a update and verification of prior diligence
12 assurances that have been made by the counterparty to assure
13 that they are currently still in compliance with that. So
14 for example, oftentimes a bring-down due diligence session
15 will seek to get assurances from a counterparty relating to
16 the fact that they're not having any issues relating to
17 being a going concerns from their auditor. That's a very
18 common bring-down due diligence item.

19 Q Does the current diligence include a review of
20 procedures and controls relating to the security and custody
21 of crypto asset?

22 A I think we've answered that question.

23 Q I'm sorry, I apologize. I missed it. Could you answer
24 the question?

25 A So I think we'll continue to perform work relating to

1 the nature and protocols that Binance.US uses relating to
2 the custody and wallet infrastructure, to the extent that's
3 the question, and we would seek assurances in advance of any
4 close relating to such, even prior sworn statements that we
5 received.

6 Q Could the current diligence impact the date of the
7 closing?

8 A Excuse me, I wasn't able to hear you.

9 Q Could the current due diligence impact the date of the
10 closing?

11 A Absolutely.

12 Q How so?

13 A We -- so as I think we mentioned, we would anticipate
14 closing probably in the range of three to four weeks from
15 approval of the plan. There's still work that needs to be
16 done from the Debtors' perspective in order to be able to
17 prepare for the closing of the transaction, that includes
18 its ability to, for example, meet the requirements under the
19 rebalancing ratio and work that needs to be done around
20 that. There's operational work that would still need to be
21 done from an integration and transfer perspective.

22 So there's a lot of work that obviously needs to be
23 performed in advance of a closing. So that's not something
24 that would occur immediately. We plan to continue to
25 perform due diligence in advance of a closing and to the

1 extent that there were issues that were raised in -- prior
2 to that period, in advance of closing that caused concern,
3 we would have two options. We would either -- and we would
4 do this in consultation with the UCC, to be clear. This
5 would not be just a Moelis decision.

6 We would confer with our board of directors. We would
7 confer with various professionals. We would confer with the
8 UCC and advisors. And to the extent that parties felt that
9 it was worth, for example, delaying a close by a week to
10 understand whether or not it made sense to run down and get
11 assurances relating to any new issues that arose during that
12 period, we would evaluate that relative to the self-
13 liquidating transaction and whether it would make sense to
14 pivot towards a toggle in that instance.

15 Q In the case that the Debtor had to pivot to the toggle,
16 what would be the consequences for customers and creditors?

17 A So the consequences in that instance, as I think we
18 outlined in the declaration, are that there would be an
19 estimated reduction of value of approximately \$100 million.
20 Additionally, in that instance, it would likely result in a
21 delay relating to the implementation of such a plan. So
22 operationally, there's just some additional work that would
23 ultimately need to be done before the platform would be in a
24 position to be able to reopen and make sure that we had all
25 of that work in place.

1 Additionally, the other consequence would really be
2 around the ability for certain creditors to receive in-kind
3 distributions relating to the 35 tokens that are
4 unsupported, and so there may be, for example, adverse tax
5 consequences associated with those 35 coins which would need
6 to be returned in cash as opposed to on an in-kind basis.

7 Q Turning back to your declaration, in Paragraph 42, you
8 state that you're not in a position to vouch for the bona
9 fides of Binance.US. What did you mean by that?

10 A So what I mean by that is that we have received
11 assurances from Binance.US. We've received sworn testimony
12 from them. But you know, as an organization, for example,
13 we're don't do forensic audits from a detailed books and
14 records perspective, right. To the extent -- and I think
15 what we were getting at is to the extent that they were
16 perpetuating a fraud, I don't think we would be in a
17 position to be able to say such.

18 Q At the end of that paragraph, you state, "And if events
19 since May 2022 have taught us anything, it is that the
20 benefits of having a decentralized and largely unregulated
21 cryptocurrency business are counterbalanced by the
22 challenges in identifying and preventing fraud." What did
23 you mean by that?

24 A So what I meant by that is specifically as it relates
25 to items like what happened with FTX. So from a

1 decentralized perspective with regards to cryptocurrencies,
2 one of the benefits is the ability to track and validate
3 transactions as they occur on the blockchain. It's -- the
4 primary use case for it is that you see exactly what is
5 occurring from a transfer perspective and it's public and
6 anybody can see that.

7 That said, you know, with the emergency of additional
8 exchanges and the way that, for example, omnibus wallets
9 work and inherently have to work in a lot of ways on these
10 exchanges, you know, it's difficult to see what activity is
11 occurring within the exchange itself and, you know, I would
12 also say the industry itself is evolving in real time in a
13 lot of ways. So, you know, for example there aren't really
14 clear industry standards relating to what appropriate due
15 diligence is for these types of businesses.

16 Federal regulators haven't put forward views and we do
17 understand that they are coming out in real time and we do
18 follow this, but you know, there is not a set of legal
19 standards, for example, that firms need to operate in that
20 operate in the space around, for example, like federal
21 banking, safety, and soundness standards. It's not a
22 concept that, you know, we would be able to rely on. So
23 that presents unique challenges when diligencing any
24 business in the cryptocurrency ecosystem, whether that's
25 Binance.US or any other party, just given the lack of

1 standards and how new the ecosystem itself generally is.

2 Q Why should the Court confirm the plan before the
3 Debtors finish ongoing due diligence?

4 A So the plan allows for an option for the Debtor to be
5 able to pivot to a toggle transaction to the extent that
6 that's in the best interest. The Debtors would take that
7 very seriously, as I think I said at the beginning. You
8 know, at this point, I wouldn't say, you know, we are fully
9 in a position to say that we would move forward with
10 Binance.US.

11 We're still continuing to perform due diligence. We
12 take the allegations in public information that's out there
13 very seriously and this is not a decision that we would take
14 lightly. We would continue to perform work and up until the
15 point where we push a button to try and close, we would
16 continue to perform work in the best of our abilities around
17 those dynamics.

18 Q Are there any external constraints that are causing the
19 Debtor to need to confirm the plan now as opposed to waiting
20 to see if everything works out in due diligence?

21 A So as it stands now, we have a plan that has
22 overwhelming support from creditors who are looking to get
23 their cryptocurrency back as expeditiously as possible. You
24 know, I understand and I'm not a lawyer. My understanding
25 is that to the extent that we were to, for example, delay a

1 plan confirmation, irrespective of whether it's a toggle
2 plan or not, it would further delay the ability of these
3 customers to be able to receive their funds. It would have
4 incremental costs associated with it.

5 And in our minds, you know, this provides for that
6 optionality and the decision would be made, and again, not
7 just by Moelis, but by the -- a range of parties ultimately,
8 in their judgment around the ability to feel comfortable
9 moving forward under those facts and circumstances. So we
10 have a plan that we believe is confirmable today. It has
11 overwhelming support of creditors.

12 It allows for a backup option and that's a critical
13 component. That was something that we attempted to
14 negotiate for in FTX and were ultimately blocked. It was a
15 very contentious negotiation. So we believe, you know,
16 those safeguards are critical to this plan and the ability
17 to move it forward as is.

18 Q I don't think that answered my question. Are there any
19 external factors that necessitate the Debtor confirming the
20 plan on the current timeline?

21 MR. SLADE: Your Honor, I object. He just
22 answered it, to the extent he didn't it's because the
23 question is vague.

24 THE COURT: I'll allow the question. Go ahead.

25 BY MR. UPTEGROVE:

1 A So do you mind repeating that again? I apologize,
2 because I may not follow it.

3 THE COURT: He's asking --

4 BY MR. UPTEGROVE:

5 Q Sure. Are there --

6 THE COURT: -- is there anything forcing the
7 confirmation to happen on the current timeline? Are there
8 any external factors; why do it now? That's what he's
9 asking.

10 BY MR. UPTEGROVE:

11 A I think that's a legal question. I'm not sure I'd be
12 in a position to answer it. I'm not an expert on how plan
13 confirmation worked in timing of such. You know, we have a
14 plan today that we believe is, in my mind, has overwhelming
15 support and we would seek to, you know, get it approved to
16 allow for these options.

17 Q There's no issue of the Debtor running out of money in
18 the next three or four weeks?

19 A Given the rebalancing transactions that have occurred
20 to date, I don't believe that there would be any monetary
21 constraints. You know, that -- it does result in a real
22 cost, though, to creditors from a potential recovery
23 perspective to the extent there are delays. It was a very
24 important point from our perspective to be able to try and
25 move a case forward, to be able to move and allow for

1 distributions of funds back to creditors as quickly as
2 possible. It's been a very key consideration from our
3 perspective, from the onset of the bankruptcy proceedings.

4 Q What would cost be -- delay it?

5 A So I don't know the exact answer. I think it would
6 depend on the facts and circumstances of how long the delay
7 is. I'm generally aware of what the cost is from the estate
8 perspective, kind of approximately \$10 million dollars a
9 month, but I can't speak to the exact specifics based on the
10 nature of the questions. And I think it would also depend
11 on, you know, if the concern is, how long would it take to
12 ultimately feel comfortable with Binance before moving
13 forward, I think it depends on what happens at that future
14 point in time. Like, it's in part asking about a future
15 unknown, depending on what information is learned or what
16 happens over that time period.

17 Q But you haven't done any analysis to determine the
18 exact cost of two-week delay, a three-week delay, a four-
19 week delay?

20 A I think a multi-week delay, as I mentioned, it's, you
21 know, from an estate perspective, it's approximately \$10
22 million a month. I can't speak to, you know, specifics
23 based on that analysis. I'd have to -- I'd have to run the
24 numbers, to be candid. I don't know.

25 Q That's the question. You didn't run the numbers.

1 A I -- so we've run analysis relating to this specific
2 plan. You're asking about a hypothetical scenario that I'm
3 not in a position to be able to answer right now.

4 Q Are you aware of any covenants that would be breached
5 or be noncompliant with if the Debtor didn't close on the
6 current timeline?

7 A So I would need to review the specifics in the APA. I
8 do know that there are outside dates, for example. I know
9 that there are, you know, requirements from the Debtors'
10 perspective to be able to try to and move expeditiously. I
11 don't recall the exact dates, though, based on the specifics
12 of the APA.

13 THE COURT: Can I just ask, counsel must know
14 this. There is a requirement that the Debtors move as
15 expeditiously as they reasonably can to get confirmation,
16 isn't there?

17 MR. SLADE: Yes, there's a milestone specifically
18 of March 6th for entry of the confirmation order. That's
19 Monday. That's Section --

20 MR. UPTEGROVE: What happens if --

21 MR. SLADE: That's Section 8.1(i)(iv) of Exhibit
22 9.

23 THE COURT: That's a requirement that in Binance -
24 - does the deal end automatically or Binance has the right
25 to terminate if that's not --

1 MS. OKIKE: Right to terminate.

2 MR. SLADE: That's it. correct. Right to --

3 MS. OKIKE: Right to terminate.

4 THE COURT: Binance has the right to terminate if
5 that isn't done?

6 MS. OKIKE: And I believe it triggers their
7 expense reimbursement. Yes --

8 MR. UPTEGROVE: May I proceed, Your Honor?

9 MS. OKIKE: It does trigger their expense --

10 THE COURT: Go ahead. Continue with your
11 questions, please.

12 MR. UPTEGROVE: Thank you, Your Honor.

13 BY MR. UPTEGROVE:

14 Q Mr. Tichenor, I'm going to move on to a new subject
15 which is user withdrawals and customer access. Under the
16 plan and APA, when will users to be able to access their
17 assets? My understanding is that users will be able to
18 access their assets?

19 A My understanding is that users would be able to access
20 their assets upon signing up and going through KYC
21 procedures to become a customer of Binance.US. Upon closing
22 and in subsequent one-week intervals, crypto would transfer
23 as users migrate and sign up. Upon crypto having been
24 transferred, I believe the APA requires that it be deposited
25 into customers' accounts within a five-day period and as, I

1 think, previously discussed in the hearings, the APA does
2 provide for the crypto to be treated in a trust and custody
3 relationship upon its transfer to Binance.US in -- during
4 each of those interval periods.

5 Q You mentioned the KYC requirements. Are there any
6 other steps that users need to take to access their assets
7 on Binance platform?

8 A I don't know.

9 Q Is there anywhere users can go to read about what they
10 need to do to access their assets?

11 A I believe it's outlined in the customer migration
12 protocol and I know that there have been communications that
13 the Debtor has sent to creditors, but I can't speak to the
14 specifics of those.

15 Q Do you know if there's a place right now, if creditors
16 on the line, that you could tell them where they need to go
17 to find that information?

18 A I don't recall.

19 Q Under Section 6.12 of the APA, if users do not satisfy
20 certain requirements within three months, then Binance.US
21 can convert those users acquired coins into U.S. dollars at
22 the then then prevailing rate; is that right?

23 A I don't have the APA in front of me, but what you're
24 describing is -- sounds consistent with my understanding of
25 how that works.

1 Q Would somebody would be able to give you a copy, just
2 because I have a couple questions about that. It might be
3 helpful to have it in front of you as we talk.

4 MR. SLADE: You want the amendments of the
5 original APA?

6 MR. UPTEGROVE: The original.

7 THE COURT: You can give him that, but we're going
8 to take a ten-minute recess at the moment, and then you can
9 continue your questions after our ten minutes.

10 (Recess)

11 THE COURT: Please be seated. Okay. Does the SEC
12 wish to continue with its cross examination?

13 MR. UPTEGROVE: Yes, Your Honor. Thank you.

14 BY MR. UPTEGROVE:

15 Q Mr. Tichenor, I believe we left off speaking about the
16 APA, in particular Section 6.12 of the APA which I think
17 provides if users do not satisfy certain requirements within
18 three months, then Binance.US can convert the user's
19 acquired coins into U.S. dollars at the then prevailing
20 rate. Is that correct?

21 A That's correct.

22 Q What happens to the value of the users accounts if the
23 price of the crypto assets in those accounts declines during
24 the three-month period?

25 A So the way that the plan works is that the distribution

1 is effectively made at the time of closing, which relates to
2 the amount of crypto that a customer would get under their
3 pro rata share relative to the rebalancing ratio and the
4 size of the initial distribution versus their claims on a
5 prepetition basis. So in this instance, we would view the
6 distribution as effectively having occurred at the time of
7 closing of a transaction, regardless of whether that
8 customer is ultimately migrated to the Binance.US platform.
9 And so whether the period is after the three-month period or
10 even any period post the rebalancing date, those users are
11 exposed to potential fluctuations in the price of
12 cryptocurrencies to the extent that they wish to monetize
13 them.

14 Q How will creditors learn about the closing when it
15 happens?

16 A So I believe under the customer migration protocol
17 that's addressed. We actually have some outstanding
18 questions around that relating to whether or not there would
19 be, for example, like an automatic email that would be sent
20 to customers through the Binance.US platform once the crypto
21 has been deposited into the account. It's currently an
22 outstanding question.

23 Q If Binance.US were to send a notice out, would that
24 also apply to creditors or users who haven't yet registered
25 on the Binance.US platform?

1 A I don't know.

2 Q If there's something else that, material event happened
3 during the course of post-closing or you know, through
4 closing, before closing, if there's a material event that
5 happened, is there a way to communicate that to creditors?

6 A I don't know.

7 Q The Committee on Foreign Investments in the United
8 States, AKA CFIUS, is conducting a review of the Binance
9 transaction. Is that right?

10 A That's my understanding.

11 Q And the review remains ongoing?

12 A That's my understanding.

13 Q Does the Debtor know what the outcome of that review
14 will be?

15 A I personally do not know.

16 Q What if CFIUS denies approval of the Binance
17 transaction? What would happen?

18 MR. SLADE: Your Honor, I object. That calls for
19 a legal conclusion.

20 THE COURT: Well, do you know the answer to the
21 question?

22 BY MR. UPTEGROVE:

23 A To the -- I guess the question would be, to the extent
24 that CFIUS blocks the transaction prior to closing? Is that
25 correct?

1 Q Yes.

2 A so --

3 Q Yes.

4 A My understanding is that to the extent that CFIUS
5 blocks a transaction prior to closing, we would be unable to
6 close with Binance.US and in that instance, presumably, we
7 would pivot to a self-liquidating toggle scenario at that
8 point.

9 Q What happens if it denies the approval after closing?

10 A I don't know the answer to that. That's a legal
11 question.

12 Q You haven't been party to conversations in which that's
13 been discussed?

14 A CFIUS is a very technical legal element. I'm not a
15 CFIUS expert.

16 Q So then you wouldn't know the impact on creditors if
17 CFIUS was to deny approval of the transaction after closing?

18 A I do not.

19 Q Are you familiar with the term user asset migration
20 date as it's used in the APA?

21 A I may need to refamiliarize myself. Do you mind?

22 Q Sure. I think -- it is on Page 85 of the document.

23 It's four U's and it refers back to user migration

24 preparation on a previous page. You see that?

25 A I see that.

1 Q Can you explain what the user asset migration date does
2 in connection with the APA?

3 THE COURT: What does this have to do with any
4 objection that's been filed? I mean, you're asking him an
5 awful lot of questions and taking up a lot of our time to
6 get information that if you'd read the documents on file,
7 you'd already know the answers to. So what is the point of
8 this?

9 MR. UPTEGROVE: The point is, I think it's
10 Paragraph 7 of our objection, is what economic benefit this
11 has, the transaction has to creditors and this issue goes to
12 whether or not there's an economic benefit for the creditors
13 at the timing of the transaction when people will be -- the
14 assets will be available, when they won't be available,
15 whether people will be paid, how they will be paid.

16 THE COURT: But we've already had testimony and
17 we've already had descriptions in the disclosure statement
18 that we'll have a closing. There'll be a migration. When
19 people are ready on the Binance platform, they get
20 distributions. If they're not ready within three months,
21 they get cash. What else do you need? What do you want him
22 to try to pinpoint it to nanosecond?

23 MR. UPTEGROVE: I'm not at all clear that's the
24 case, Your Honor. If you -- so the question is, all I
25 really wanted to know from him is what -- I don't understand

1 it, Your Honor, but the user asset migration date, I've
2 heard a lot of people talk about the five days. I don't
3 understand how this -- I have read it, Your Honor, and I
4 haven't understood how this user asset migration date
5 corresponds to the five day and the rollout, the weekly
6 rollout.

7 And so all I wanted to get from this witness is
8 how if at all does this asset migration date impact the
9 user's ability to withdraw and what's already been on --
10 people have testified about.

11 MR. SLADE: Your Honor, perhaps I could --

12 MR. UPTEGROVE: That's all I want to do.

13 MR. SLADE: We would've been happy to field
14 questions about this from the SEC had they asked us before
15 this hearing. If they look at the amendment, that
16 definition, user asset migration date actually has been
17 deleted and it's been replaced by a separate definition
18 called asset migration date which describes it in some
19 detail. So if you look at the exhibits that are online that
20 we uploaded, you'll be able to answer that question. I'm
21 not sure if the witness can.

22 MR. UPTEGROVE: That's helpful. Thank you. So we
23 can move on.

24 BY MR. UPTEGROVE:

25 Q Mr. Tichenor, are you familiar with the terms of use

1 for the Binance.US trading platform?

2 A The terms of use? Excuse me, I just couldn't hear you.

3 Q Yes. Yes, the terms of use for the Binance.US trading
4 platform.

5 A I'm broadly familiar with it. We -- I have read it.
6 That's an item, too, where you know, we're discussed that in
7 connection with counsel which is better situated to be able
8 to opine on any legal matters associated with terms of use
9 than I would be. But yes, I have read it.

10 Q Are you aware that pursuant to the trading portion of
11 the terms of use, Binance.US in its sole and absolute
12 discretion may halt trading or restrict access to the
13 trading platform?

14 A I don't recall that specific provision.

15 Q So you wouldn't recall, you don't know if there's
16 anything in the APA that would limit that discretion.

17 A I don't recall. I know in the APA we have protections,
18 for example, around to the extent that there is a halting of
19 trading on the Binance.US platform, that it allows the
20 Debtor to, for example, not send funds or provides the
21 liquidating trust, I believe, the option to not use them for
22 purposes of distributions. And broadly speaking, and again,
23 I don't recall the exact specific sections.

24 I recall that there was discussion around, for example,
25 you know, halting of trading and concerns that would have.

1 I think obviously to the extent that there was a halting of
2 trading, that would be a material event from the debtor's
3 perspective in determining whether or not it would send
4 funds to Binance.US.

5 Q I guess the question was, since you're -- you don't
6 recall that specific provision in the terms of use, you're
7 not aware of any specific provision that would limit the
8 discretion or halting trading or access to the platform?

9 A I'm not.

10 Q Different subject --

11 A I would say that, look, that is something that we
12 track. If we were aware that there was halting of trading
13 on the platform, as I said, that would be a very material
14 concern from Debtors' perspective with their willingness to
15 move forward with this counterparty.

16 Q Are you going to track it after the deal closes?

17 A I -- prior to each subsequent distribution, I believe
18 that there will be parties that will be looking at that,
19 yes. I mean, it -- and by the way, that's not just Moelis.
20 That would be the liquidating trustee who would be executing
21 transfers, management team. There's, you know, each bulk
22 transfer that occurs is not a simple process. It's manual
23 in a lot of ways. And so, you know, there's an expectation
24 of in-depth material coordination between the Debtor and
25 Binance.US post any closing in order to, again, continue to

1 migrate on the weekly basis.

2 And so to the extent that parties were aware, for
3 example, of a halting of trading prior to any of those
4 subsequent migrations, I would be -- I would highly, highly
5 doubt that parties would move forward with continuing to
6 transfer subsequent funds in that instance, for example.
7 But look, it's a fact and circumstance specific, too, so.

8 Q Just to be clear, so if after the closing, there's a,
9 you know, shortly after the closing, there's a run on the
10 bank so to speak, and Binance in its discretion halts
11 trading, what if anything could the Debtors do?

12 A Well, I think at that point -- and I think there are a
13 couple of points in there, to be clear.

14 One, one of the important elements, you know, from the
15 Debtors' perspective when performing the diligence was
16 assurances, for example, around the fact that they have one-
17 to-one reserves. And so one of the things that we had
18 thought about was, you know, the ability to, for example,
19 support a run on the bank. Theoretically can't have a run
20 on the bank for a business that's only has one-for-one, you
21 know, kind of -- I'll call it, acts as like a cashbox to a
22 degree, right, in custody capacity like that. So that was
23 an important element.

24 Two, you know, there could be reasons that are
25 explainable that I can't think of right now relating to why

1 there could be theoretically a justification for halting of
2 training that would still justify people feeling comfortable
3 moving forward. You know, if there was a technical glitch
4 with a cloud provider that resulted in an issue that was
5 only temporary for a very short period of time. Like there
6 are countless hypotheticals I that can't necessarily speak
7 to, but to the extent there was a halting of trading, it
8 would be a very important element for purposes of the Debtor
9 at that point.

10 And I think that would they continue to transfer funds
11 over? In all likelihood no, if there was a real concern
12 around what the basis for that was, and that's a pretty low
13 threshold for what that concern level would ultimately be to
14 the extent you're talking about something as severe as a
15 halting of trading on a platform.

16 Q Switching gears a little bit, if Binance.US was
17 determined to operate as an unregistered securities
18 exchange, what impact would that have on the Voyager
19 customers who moved over from the Binance -- or excuse me,
20 yeah, the Voyager customers who moved over from to the
21 Binance platform?

22 MR. SLADE: Your Honor, I object. That calls for
23 a legal conclusion.

24 THE COURT: Do you have any ability to answer that
25 question?

1 THE WITNESS: I do not.

2 THE COURT: Okay.

3 BY MR. UPTEGROVE:

4 Q Mr. Tichenor, can you go to paragraph -- or Section 4.7
5 of the APA, please?

6 A Is this -- this is the nonamended version? No
7 litigation?

8 Q Yeah. Is there an amended portion of this?

9 A No, I'm just making sure I'm referencing the right
10 exhibit.

11 Q Do you see that provision?

12 A The knowledge qualifier?

13 Q Well, just to make sure we're looking at the same
14 thing, on my 4.7 it says, "No litigation. There are no
15 actions pending or to the knowledge of purchaser threatened
16 against or affecting purchaser that will materially and
17 adversely affect purchaser's performance under this
18 agreement or purchaser's ability to consummate the
19 transaction." Are we looking at the same thing?

20 A I see that paragraph, yes.

21 Q During the course of due diligence, has Binance
22 disclosed to the Debtors or have the Debtors learned of any
23 material or any actions pending against Binance.US?

24 A To the extent the question relates to -- excuse me. To
25 the extent the question relates to whether or not the Debtor

1 asked whether or not, for example, there are pending
2 litigations or investigations relating to Binance.US, the
3 answer to that is yes. We did ask. We had a number of
4 conversations relating to various pending investigations for
5 the -- relating to the purchaser. If that's the extent of
6 the question.

7 Q What did they disclose?

8 MR. SLADE: Your Honor, I object. This is not
9 relevant and it seems like --

10 THE COURT: Overruled.

11 BY MR. UPTEGROVE:

12 A So they disclosed that there were investigations
13 ongoing from several various federal agencies. They
14 disclosed to us that they had provided, for example, written
15 documentation to those the parties relating to requests and
16 inquiries made in connection with those investigations. We
17 were not aware of any actions that were ongoing relating to
18 Binance.US, but I can't speak for anything beyond that. I'm
19 not aware of any, you know, pending for example, lawsuits
20 against Binance.US by a federal agency./

21 Q With respect to the government investigations, what did
22 they disclose?

23 A That was subject to confidentiality. I'm not sure I
24 can discuss that. I mean they -- I think I tried to mention
25 what I could, which was that they provided us information

1 relating to the nature of the injuries. They provided us
2 disclosure. And these were discussions that we had, that we
3 participated in with multiple sets of counsel including
4 Binance.US' counsel on various matters. We're aware that
5 they had provided information to various agencies in
6 connection with those requests. And that's what we're aware
7 of.

8 Q So your understanding is that the identity of the
9 governmental agencies investigating Binance.US is covered by
10 a confidentiality agreement?

11 A I'm aware of various federal agencies doing
12 investigations. I -- speaking to every single one of them
13 right now, trying to recall them off the top of my head, I
14 have difficulty, but I'm aware of some major financial
15 agencies such as, you know, the SEC and other parties that I
16 think are public information around the nature
17 investigations, you know, and when we deal with financial
18 companies, generally speaking, it's not uncommon for us to
19 see situations where, you know, there are various inquiries
20 that various federal regulators and state regulators may
21 make in connection with parties that they regulate.

22 Q You said that they disclosed that the SEC had an
23 investigation relating to Binance?

24 A They did.

25 Q What did they say?

1 A That they had received requests relating to information
2 on relationships, for example, with third parties and
3 certain affiliates.

4 Q Anything else?

5 A I don't recall. That conversation took place a while -
6 - long enough ago that I just don't recall the exact
7 specifics. I'd have to reference my notes.

8 Q When did it happen?

9 A Probably in -- I would say it was -- I know it was
10 prior to the signing of the APA and I think we've had some
11 continued ongoing discussions with them relating to these
12 members. It's not a static element, but I just don't recall
13 the exact dates.

14 Q So you knew prior to entering into the APA that there
15 was investigation by the SEC of Binance?

16 A We were aware that they had requested information and
17 that they -- that there was an investigation, yes.

18 Q Have they updated you on the status of the
19 investigation?

20 A I don't believe probably within the last couple weeks,
21 but I just don't recall, candidly.

22 Q The Debtor, do the Debtors view that, those
23 governmental investigations as important matters?

24 A We did.

25 Q Did the Debtor understand the nature of the

1 governmental investigation?

2 A We understood the nature of what the requests related
3 to. We asked questions relating to -- and follow-up
4 questions relating to the nature of what the inquiries were,
5 what information was provided, what the status of those
6 pending discussions were, whether or not there were follow-
7 up requests, for example, compliance. So we asked a number
8 of questions relating to any -- relating to those
9 investigations and proceedings, yes.

10 Q Did Binance.US share any documentation with the Debtors
11 concerning those governmental investigations?

12 A They may have with counsel. It's highly unusual for
13 investment bankers to ever receive information relating to
14 communications between a regulator and a counterparty.
15 Worked on a number of financial institution related
16 situations and generally those reviews being privileged, so
17 it's highly atypical for us to see primary documents
18 relating to those investigations, as non-lawyers.

19 Q How did those -- understood. How did those
20 investigations relate to the Debtors' ongoing due diligence?
21 Is that anything that the Debtors are considering?

22 A Yeah, we -- yes. We would obviously consider any
23 changes relating to ongoing investigations that we became
24 aware of from a federal agency as material facts potentially
25 in assessing the counterparty and the risks associated with

1 moving forward with them. As we evaluate -- to the extent
2 that we moved forward with the plan, we got approval for it,
3 and prior to closing we were evaluating the risk adjusted
4 elements of moving forward with a transaction with
5 Binance.US relative to the tradeoff and the costs associated
6 with self-liquidating toggle. That would be one of the
7 potential considerations. Absolutely. If there was a
8 material change, for example, that would obviously be a
9 consideration. It's very hard to say what that will look
10 like in three to four weeks.

11 Q At any time since the entry into the APA has Binance.US
12 informed the Debtor that there's been some material change
13 in any of the government regulatory investigation?

14 A Not to my knowledge, but counsel may have participated
15 in calls that I wasn't on.

16 Q What if anything have the Debtors disclosed about any
17 of the investigations that it has learned during the course
18 of due diligence?

19 A Do you mind repeating the question?

20 Q Yes. What if anything have the Debtors disclosed about
21 the government investigations that it has learned about
22 during the diligence?

23 A I don't recall what the disclosure in the plan
24 disclosure statement is relating to any of that.

25 Q Do you think that the status of government

1 investigations is a relevant consideration for creditors in
2 voting on the plan?

3 MR. SLADE: Your Honor, I would object. Lack of
4 foundation.

5 THE COURT: He can answer.

6 BY MR. UPTEGROVE:

7 A To the extent that I think it would depend on what the
8 nature of those investigations are and whether or not those
9 relate to, for example, normal course investigations or
10 they're criminal proceeding investigations, for example,
11 against the company, I think it's a bit of a question that
12 depends a lot on the nature of what the facts and
13 circumstances are. I think it's hard to say in the absence
14 of -- it's a very broad question.

15 Q Do you believe that the Debtors have disclosed all
16 material facts to creditors about ongoing investigations and
17 litigation?

18 MR. SLADE: Yeah, Your Honor, I object. That --
19 his opinion on that is not relevant and also the SEC did not
20 object on this basis.

21 THE COURT: Well, it would be troubling if his
22 opinion was no, but, you know, he's obviously not being
23 asked as a lawyer or as an ultimate fact finder, but do you
24 think the Debtors have failed to comply with their
25 disclosure obligations?

1 THE WITNESS: I hope that the Debtors have not
2 failed to comply with disclosure obligations, Your Honor.
3 We have spent countless hours working with counsel to make
4 sure that, you know, we're properly disclosing key
5 considerations related to the plan. Again, it's a very long
6 document and so for me to reference a very specific element
7 of it in a very specific question, I just don't recall the
8 specifics of it, but yes, I mean, I believe that the Debtors
9 have sought to disclose important information in connection
10 with the plan. And I don't think --

11 MR. UPTEGROVE: That's all the questions I have.

12 THE WITNESS: -- we would be here today looking
13 for approval on that basis, to the extent that we felt like
14 there were any deficiencies.

15 MR. UPTEGROVE: Thank you, Mr. Tichenor. That's
16 all I have. Thank you.

17 THE COURT: All right. Is there anybody else on
18 the telephone who would like to cross examine --

19 MS. RYAN: Yes.

20 THE COURT: Okay.

21 MS. RYAN: Good afternoon, Your Honor. This is
22 Abigail Ryan with the State of Texas Attorney General's
23 Office on behalf of the State Securities Board and the Texas
24 Department of Banking.

25 CROSS EXAMINATION OF BRIAN TICHENOR

1 BY MS. RYAN:

2 Q Good afternoon, Mr. Tichenor. And one thing, I've
3 heard your name said Tichenor and Tichenor. What is the
4 correct pronunciation?

5 A It's Tichenor. Thank you.

6 Q Okay. That's important.

7 A A lot of times, people say Tichenor which is not a --

8 Q Thank you for letting me know. Names are important.
9 So good afternoon, Mr. Tichenor. I just have a few (audio
10 drops) and I want to clear up a couple of things. In your
11 declaration that was filed, it stated that if you went to
12 the toggle plan, Binance would help in liquidating the
13 coins, but earlier you testified Voyager would liquidate it?
14 who would be liquidating it under the toggle plan?

15 A Liquidation of the 35 unsupported coins?

16 Q Just all the coins. So if somebody else is doing the
17 35 and somebody else is doing the remainder who are those
18 companies?

19 A Well, I don't believe that there would be any other
20 companies that would do the remainder. I think -- are you
21 referring to, like, a seven situation where there would be
22 like --

23 Q Oh, no. I can be more clear. Under the toggle plan
24 who liquidates the 35 coins?

25 A Who what?

1 Q Who would liquidate 35 coins --

2 A Yeah.

3 Q -- that aren't supported?

4 A Look, I think that is a -- it's an unknown at this
5 point. As I was saying, I think the Debtor would seek to
6 maximize value for the estate in connection with any
7 transactions that would need to occur on those coins. It
8 would be at the Debtors' discretion.

9 THE COURT: There's a bit of confusion built into
10 the question when you ask who would liquidate. Are you
11 asking who would decide how to sell and to whom or are you
12 asking to whom coins would be sold? There's a difference.

13 MS. RYAN: I'm asking who would do the selling.

14 THE COURT: Okay. So would voyager do the selling
15 or would it ask somebody else to do it?

16 THE WITNESS: Yeah, so -- and I think this relates
17 more broadly to the rebalancing transactions. We have
18 worked hand-in-hand with the UCC in connection with the
19 rebalancing transaction and have been in full agreement with
20 them to date around the nature of various third-party
21 proposals that we received, for example. And I mention this
22 because it's broadly consistent with how a liquidation of
23 those 35 coins would ultimately work, is that it would be in
24 consultation with the UCC. We would in all likelihood, is
25 the Debtor would seek to get third-party potential

1 proposals. It may seek to liquidate them itself using its
2 existing smart order router or third party systems that it
3 has access to. So I don't know the full answer yet. I
4 think it would depend on the specific facts and
5 circumstances of the situation and what the collective
6 agreement was between both parties to move forward on that
7 basis.

8 THE COURT: But there's no plan to say --

9 MS. RYAN: Okay, so --

10 THE COURT: There's no -- for example, you're not
11 planning in the event of the toggle plan to say, here
12 Binance, here's all our crypto, sell it for us?

13 THE WITNESS: Absolutely not, Your Honor. Yeah.

14 THE COURT: Okay. That's what I think the
15 implication of the question was. got it.

16 MS. RYAN: Thank you, Your Honor. That was
17 exactly right.

18 BY MS. RYAN:

19 Q So in Paragraph 37 of your declaration it says that the
20 asset purchase agreement provides that in the event Debtors
21 pivot to a liquidation transaction, Binance.US will provide
22 certain services to facilitate the liquidation transaction
23 to ensure the Debtors can rely on the Binance.US platform to
24 minimize leakage with cybersecurity risks when returning
25 cryptocurrency to creditors. So in the toggle transaction,

1 what are these services that Binance.US would provide?

2 A So I think what they have indicated is that they would
3 be helpful in supporting services and facilitating and
4 assisting in the transaction to the extent that it was
5 possible. I think the specifics around what exact services
6 they would provide, we haven't fully fleshed out in
7 connection with them and I think that is, in our minds an
8 add-on, right. It's not something that we necessarily have
9 to do. It would be that they would offer services
10 potentially to the Debtor, but it doesn't mean that the
11 Debtor has to use those services.

12 Q Under the toggle transaction, would all (audio drops)?

13 A Sorry, I -- you were breaking up there. I apologize.

14 THE COURT: Somebody is bumping against a
15 microphone. I don't know who it is, but anybody who's not
16 actually asking questions right now, please mute your line.
17 Please go ahead, Ms. Ryan.

18 MS. RYAN: Thank you. Can you hear me better now?

19 THE COURT: Yes, we can.

20 MS. RYAN: Thank you.

21 BY MS. RYAN:

22 Q So it's my understanding under the toggle transaction,
23 all Bitcoin would be sold and reduced to U.S. dollars; is
24 that right?

25 A Under the toggle transaction? No. I don't believe

1 that's the way the toggle transaction would work.

2 Q Can you explain to me how it would work?

3 A Yeah. So the toggle transaction is in many ways
4 analogous to a transaction with Binance.US, but it has
5 certain key differences and considerations and I would
6 characterize those as being really relating to the fact that
7 there are 35 tokens, for example, that cannot be distributed
8 back to customers on an in-kind basis through the Voyager
9 platform given the technical limitations that I think we
10 discussed at the beginning of my testimony. And I'd be
11 happy to discuss those further.

12 The other difference is that it would occur through the
13 Voyager platform and would only be made available for
14 withdraws over a limited period of time such that customers
15 would have an ability to access and transfer that crypto
16 from Voyager to a third party or a third-party digital
17 wallet or self-custody wallet, for example. And then after
18 a certain period of time, the platform would liquidate
19 whatever had not been moved.

20 It would use the cash proceeds from those liquidations
21 to distribute funds and then would effectively, you know,
22 shut down for all intents and purposes. But those are the
23 key differences. And so when you think about a liquidation
24 transaction in this context, there is a big and materially
25 key difference between a self-liquidating toggle transaction

1 relative to what people may think of as a liquidation in the
2 context of a Chapter 7 liquidation which is, insofar as in
3 that instance, the majority of cryptocurrencies being the
4 non-35 tokens that are unsupported from being distributed in
5 kind would be distributed in kind.

6 So it's the same construct from a rebalancing
7 perspective except the difference is that for the 35 that we
8 can't distribute back, we need to distribute cash to those
9 creditors instead on an equivalent value basis under the
10 same construct. But the concept is still the same with
11 regards to the way the rebalancing would work, so for
12 example, for example, BTC is not liquidated. ETH is not
13 liquidated. SHIB is not liquidated. Anything that is a
14 supported token would not be liquidated. It would be
15 rebalanced under the construct of the plan in a similar
16 manner to Binance, the Binance.US deal.

17 Q That was really helpful. Thank you for that
18 explanation. So it sounds like under the toggle
19 transaction, unsupported jurisdiction customers could
20 actually move theirs off and into a third-party wallet; is
21 that right?

22 A That would be correct, yes. I believe -- to the extent
23 --

24 Q Okay.

25 A -- they're allowed to (indiscernible) for Voyager as a

1 platform, yes.

2 Q Right. That -- fair enough. So under -- making the
3 decision as to whether you go with Binance or do the toggle
4 transaction, is that a unilateral decision on behalf of the
5 Debtor?

6 A So I believe it would be a decision that ultimately
7 would be made by the board of directors of the Debtor, but
8 it would be in consultation and discussion with, for
9 example, the UCC and, you know, presumably the advisors
10 would be providing a recommendation for example, to the
11 board. But it would ultimately, I believe, be a decision of
12 the board of the Debtor.

13 Q Okay, thank you. Moving to the audited financials from
14 2021, were you able to get any audited financials from 2020?

15 A I believe their audit covered two years, but I just
16 don't recall. I apologize.

17 Q That's okay. Do you remember who the auditing firm was
18 that did their financials?

19 A I do.

20 Q Who are they?

21 A I believe we're subject to confidentiality, but it's a
22 large known audit firm in the techs ecosystem. I mean, I
23 can answer it to the extent --

24 Q Okay. Do you know -- I'm sorry, I didn't catch that
25 last part.

1 A I was saying, I could answer that to the extent the
2 judge wanted me to, but we were subject to confidentiality.

3 Q Okay.

4 A I don't know if Binance is okay with that.

5 Q I understand. Do you know if Binance currently has an
6 accounting auditing firm?

7 A Yes, they made a representation to us that they have a
8 new auditor and we understood that their relationship with
9 their prior auditor, that they had been in the process of
10 transitioning to a new auditor in advance of the collapse of
11 FTX. So the change in auditor was not something that was
12 specifically triggered, for example, by that -- as we
13 understand it, was not triggered by that audit firm, for
14 example, seeking to terminate them. It was a mutually
15 agreed decision where Binance.US was seeking to transition
16 to a new auditor.

17 Q Okay, thank you. When reviewing their audit, their
18 books, their records, did you review whether Binance has
19 made loans to any other cryptocurrency companies?

20 A So one of the key considerations that we looked at, and
21 again, the audited financials that we reviewed related to
22 Binance.US. I want to be clear on that. One of the items
23 that we reviewed was an overview of the assets as outlined
24 in the audit relating to -- which, you know, is where loans
25 to third parties would ultimately show up, we were not aware

1 of any loans based on that audit review that had been made
2 to third parties.

3 That was an important element from our perspective in
4 understanding, you know, the dynamic around whether or not
5 they had an ability to, for example, you know, rehypothecate
6 crypto for, you know, for example.

7 THE COURT: You just said third parties. What
8 about affiliates?

9 BY MS. RYAN:

10 Q Did you see if loans made to -- I'm sorry.

11 THE WITNESS: To affiliates? That would include
12 affiliates as well, Your Honor.

13 THE COURT: I'm sorry, Ms. Ryan. I kind of spoke
14 over you because I wanted to ask a question before I forgot
15 as time went on. He had said third parties and I asked if
16 that included affiliates. And he said, yes.

17 THE WITNESS: I would say more broadly, Your
18 Honor, it included all loans that would be made to -- it was
19 a big concern of ours in light of, obviously, what's
20 happened in ecosystem.

21 THE COURT: Thanks. Thanks for the clarification.
22 I'm sorry --

23 MS. RYAN: That was going to be my next question,
24 Your Honor, so thank you.

25 THE COURT: Okay.

1 BY MS. RYAN:

2 Q So I know that the gentleman with SEC was asking about
3 reviewing Binance legal matters and things and I understand
4 that's not your wheelhouse. Who does review them to decide
5 whether a legal matter is material?

6 A You know, we have active discussions with the counsel,
7 with our counsel K&E -- or the Debtors' counsel, excuse me,
8 which is Kirkland. I know that they're in active dialog
9 with the UCC's counsel, which is McDermott, for example.
10 There's active dialog with the company which also has
11 independent counsel and it would also include, I think,
12 discussions with Binance's U.S. counsel, so I mean, there's
13 a lot of professionals. Our lawyers that have been engaged
14 by various parties in the situation and I'd say to date
15 people have worked in a very collaborative manner.

16 Q Thank you. How did you verify that -- and I'm going to
17 get this wrong. I am not an expert in crypto by any
18 stretch, but how did you verify the one-to-one ability of
19 Binance, to (indiscernible) the coins?

20 A That's a great question. So we did look at, for
21 example, wallet -- a list of wallets that was provided to us
22 from the company and looked at, you know, balances in those
23 wallets. We then compared them to our understanding of what
24 had been disclosed in the financial statements. To say that
25 we did a thorough, you know, for example, like a proof of

1 reserves on Binance.US' reserve ratio, though, you know,
2 that is well beyond the scope of what a firm like Moelis
3 performs.

4 There are generally third party auditors, for example,
5 that perform those types of scopes of service. One thing
6 that we did look at, though, and was an important
7 consideration is that that dynamic is discussed and
8 disclosed in their audited financials and treatment of
9 customer crypto in the audited financials, the structure is
10 such that it was determined to be a custody relationship,
11 that there was no, you know, rehypothecation, for example,
12 and those elements.

13 And then on top of that, excuse me, we did receive
14 obviously sworn statements from Binance, and this wasn't an
15 area where it is -- it was a key consideration for us, so as
16 part of diligence, for example, we would ask for information
17 on a primary, a document basis. We would ask questions in
18 different ways in order to make sure that we understood and
19 didn't have inconsistencies with what information was
20 provided to us. But I would say, you know, look, we did not
21 do a, for example, like a proof of reserves to the extent
22 that's the nature of the question.

23 Q No, that's a perfect answer. Thank you. Did -- in
24 reviewing the financial documents, were you able to tell
25 what Binance entity actually keeps custody of U.S.

1 customers' electronic wallets?

2 A My recollection -- I don't recall.

3 Q Are you aware that in 2019 it was a Binance Cayman
4 Island company that purportedly held the electronic wallets
5 for U.S. customers?

6 A I'm not aware of that, no.

7 Q Do you know if Binance.US has the technical
8 infrastructure to run its business without dependence on
9 Binance.com?

10 A It has been represented to us that they would. Our
11 understanding of the way that they operate is that there are
12 certain commercial services and licensing ingredients, for
13 example, relating to technology that they license from
14 Binance.com, but you know, similar to -- and again, this is
15 my understanding, right?

16 Similar to, for example, if I were to receive a copy of
17 Windows, I may not need to be able to rely on Microsoft as a
18 firm continuing to operate. So my understanding is that the
19 services that are provided by Binance.com are limited to
20 functions that would allow Binance.US to continue to operate
21 to the extent that Binance.com no longer existed. That was
22 something that we specifically asked about during our
23 diligence.

24 Q Okay. So for instance, if Binance.com technical
25 infrastructure were to crash, Binance.US would not be

1 affected?

2 A So that is a representation that has been made to us.
3 It was a question that we asked. It was an important
4 element. I can't specifically represent whether or not
5 there's some piece of code that results in a callback
6 function to a server that's -- there's a lot of elements
7 that could cause that to be the case. What has been
8 represented to us is that it's not, and that's as much as I
9 can say.

10 Q Okay. When you say it's been represented to you, in
11 what manner was it represented? Was it orally, in writing?

12 A Both. We've had multiple calls. We've had in-person
13 meetings. We've had physical document reviews. Received
14 sworn statements around items like this.

15 MS. RYAN: Thank (indiscernible) finished. I pass
16 the witness. Have a good afternoon.

17 THE WITNESS: Thank you. You, too.

18 THE COURT: Thank you, Ms. Ryan. Is there anybody
19 else on the phone who would like to cross examine the
20 witness?

21 MR. NEWSOM: Yes, Your Honor. Dan Newsom, pro se
22 creditor. Just a few questions.

23 THE COURT: Okay.

24 CROSS EXAMINATION OF BRIAN TICHENOR

25 BY MR. NEWSOM:

1 Q Mr. Tichenor, good afternoon. You stated that a toggle
2 would diminish the value or the return of value on VGX. You
3 also stated that Binance doesn't intend to create value for
4 VGX. Can you explain why there's a difference in the value
5 of VGX in a toggle versus a sale?

6 A Yeah. So the difference was relating to the fact that
7 Binance.US was agreeing to seek to try to list the token on
8 their platform. Our view, and again in discussion with
9 various people at the company around VGX and other, you know
10 -- who are more familiar with specifics around, for example,
11 specific cryptocurrency assets, the view was that the
12 ability to create value and utility, for example, relating
13 to a sale of the smart contracts in that instance, was
14 likely greater to the extent that the token was listed.

15 There was a perception of support for it on a go-
16 forward basis, but it was an estimate and you know, what we
17 would say is that ultimately, I don't think that would
18 change the conclusion, which is an important element. We
19 would still view under those facts and circumstances if that
20 element was normalized between those two, that the Binance
21 plan still provides for potentially higher recovery value.

22 But you know, it was an important element for us to
23 also include relative to this, you know, self-liquidation.
24 But I wouldn't say it was a determining factor, if that's
25 part of the question.

1 Q Thank you. Would a toggle transaction not also
2 contemplates the sale of VGX smart contracts?

3 A It likely would, yes.

4 Q So in your opinion, in either case, the value or
5 utility of VGX is ultimately dependent on the sale of the
6 smart contract?

7 A In part. I think the likelihood of finding a, for
8 example, high quality party that is seeking to get, you
9 know, the -- and has an interest in the smart contract
10 utility on a go-forward basis, one of the factors that we
11 understand based on discussions with, you know, the parties
12 that we've engaged with is the forums that that smart
13 contract is listed on, a lot of the value from their
14 perspective in a number of ways, if somebody was to take
15 over that smart contract and seek to turn it into more of
16 utility on a go-forward basis, is in part reliant on the
17 fact that VGX is a known commodity for all intents and
18 purposes.

19 It's out there. It's listed on a number of exchanges.
20 It trades. People know it from the case. And so that has
21 value for people. And so part of the view I think was that
22 to the extent that a party like Binance.US listed it, one,
23 it shows support from this plan and two, the likelihood of
24 attracting that type of party is arguably better in that
25 circumstance. But again, I do want to be clear that the

1 calculation around VGX was not the determining factor in the
2 comparison.

3 Q Sure. Understood. So when will we know whether
4 Binance.US intends to list VGX or not?

5 A I can't speak to what their internal review process
6 looks like, unfortunately.

7 MR. NEWSOM: Okay. No further questions, Your
8 Honor.

9 THE COURT: Thank you. Is there anybody else on
10 the phone who wishes to cross examine the witness?

11 MR. HENDERSHOTT: Yes, Your Honor. Tracy
12 Hendershott, pro se creditor. Ladies first. Is that Gina?
13 Gina? Okay, I guess I'll go, with Your Honor's permission.

14 MS. DiRESTA: I was trying to unmute. You want to
15 go, Tracy? I don't mind.

16 MR. HENDERSHOTT: Yeah, sure.

17 THE COURT: Let me ask you --

18 MR. HENDERSHOTT: With Your Honor's permission.

19 THE COURT: Let me ask. We're pretty much at our
20 lunchtime. Do you have -- how many questions do you have?

21 MR. HENDERSHOTT: I'm sorry, Your Honor, you were
22 breaking up. You said something about lunchtime?

23 THE COURT: We're pretty much at our lunchtime,
24 but how many questions do you have, do you think?

25 MR. HENDERSHOTT: I have eight questions

1 currently, but depending on the answers, it may extend.

2 THE COURT: Eight questions. Let's do your eight
3 questions.

4 MR. HENDERSHOTT: Okay. Thank you, sir.

5 CROSS EXAMINATION OF BRIAN TICHENOR

6 BY MR. HENDERSHOTT:

7 Q Good afternoon, Mr. Tichenor. I'm a pro se creditor in
8 this case. I'd like to go back to -- thank you. I'd like
9 to go back to your opening statements when you highlighted
10 obstacles and called out that this was one of the rationale
11 of why the Binance deal is better than the toggle or even a
12 liquidation. And I just want to confirm, did I hear you
13 correctly that in relation to the liquidation, the illiquid
14 coins would result up to a 50 percent slippage commission
15 structure; is that correct?

16 A Yeah, it would be up to. The analysis was done on a
17 coin-by-coin basis and it was based on a number of factors.
18 So it was -- and I would call it an educated estimate that
19 was done in connection with management and individuals at
20 the company that, you know, have experience in trading
21 crypto currencies. We solicited as I think I mentioned
22 multiple proposals from various different OTC market makers,
23 for example, and collected all of those facts together in
24 determining and working, you know, collaboratively again,
25 you know, not just Moelis, BRG, the company management,

1 others, in assessing what those discounts could be. I
2 mentioned the 50 percent number in that I would have to go
3 back, but I don't believe the estimate for purposes of the
4 discount was exactly 50 percent on those coins. I do recall
5 that we received a number of bids, though, that were at 50
6 percent, if not greater.

7 Q So -- and I guess that's where my confusion is, and so
8 do I recall correctly that you said 100 million would be the
9 slippage for the process of liquidation in total due to
10 these illiquid coins?

11 A In total, yes. I think the estimate for those specific
12 coins, if I'm not mistaken, is like 60 million specifically.
13 I'd have to check --

14 Q Okay --

15 A -- the numbers, though.

16 Q Okay, so you're saying the slippage is 50 million, not
17 100 million?

18 A Correct. The 100 million also includes foregone
19 proceeds that we would receive from Binance.US to the extent
20 that we didn't close with them, which is, you know,
21 obviously the purchase price and then I think I mentioned
22 the VGX element.

23 Q Okay, but let's stick with the liquidation. \$60
24 million of damage due to slippage because of the illiquid
25 nature of 35 coins; is that your statement?

1 A That's my recollection of the numbers, yes.

2 Q Okay. Thank you, sir. So this is where my confusion
3 is. The day before the Debtors turned off access to our
4 investments or even today, you know, go to Coinbase, go to
5 Binance, I go anywhere, I can make a \$5 million transaction
6 at a 5 percent commission. So I'm struggling to understand
7 how, Moelis, you know, the rainmaker, dealmaker, why are you
8 being faced with 50 percent haircut when I can make a \$5 to
9 \$10 million transaction with a 5 percent commission rate?

10 A So I think even to the extent that we're talking about
11 a \$5 million trade, I think, you know, what happened last
12 night is a good example of what market depth means within
13 crypto, in the cryptocurrency space. We saw a very
14 precipitous drop in the price of Bitcoin and all other --
15 all coins as a result of what I understood based on what
16 I've seen publicly, to be relatively small trading volume in
17 Bitcoin.

18 It's -- you know, just even trading a \$5 million block
19 of Bitcoin is very, very different than the estate trying to
20 liquidate a large portion if not a majority portion in some
21 instances of very illiquid tokens. And liquidity has a lot
22 of different elements to it. It can be trading volume
23 that's being reported, but ultimately, you know, as we think
24 about market depth, it really relates more to, you know,
25 what the marginal buyers are at various prices.

1 And so to the extent you have in some instances,
2 highly, highly concentrated ownership in some of these
3 tokens, the ability to be able to trade out of those and
4 find marginal buyers in certain instances can be very
5 difficult.

6 THE COURT: The 50 percent or up to 50 percent
7 you're talking about is not a commission. It's what you
8 think --

9 THE WITNESS: Correct --

10 THE COURT: -- the effect would be on what people
11 are willing to pay?

12 THE WITNESS: That's exactly right, Your Honor.
13 We -- there were no -- there would not be a condition, for
14 example, on the block trade. It's already embedded.
15 They're taking the risk in that instance. When the estate
16 does transactions, it uses a range of exchanges, for
17 example, OTC desk, if it were to just sell into the market
18 on its own over a long period of time and the transaction
19 fees on that -- and that's similar to we're doing on the
20 rebalancing. We've negotiated very, very low fees, on a fee
21 basis. To the extent you're talking about a commission, so
22 in comparison to like a 5 percent commission, you know, for
23 illiquid tokens it's, you know, sub 25 basis points.

24 BY MR. HENDERSHOTT:

25 Q Could you give us an example, because yesterday and the

1 same conversation came up with (indiscernible) BRG, the
2 example that was presented yesterday which I've heard you
3 contradict today was Shiba Inu as one of the illiquid coins,
4 but earlier today in your testimony, you highlighted the
5 Shiba Inu is not illiquid.

6 A So --

7 Q Is that correct?

8 A I don't believe that's what I said. I said that Shiba
9 Inu was a supported token, I believe.

10 Q Okay. So could you give us an example of a token where
11 we would expect this 50 percent haircut due to, you know,
12 this liquidation process?

13 A So from what I understand, and again, this is not just
14 (indiscernible). This is based on, you know, discussions
15 with a lot of parties analyzing a range of these factors. A
16 couple examples would be BTT, VET, and StormX, all of which
17 would fit in that category.

18 Q Thank you. And can you tell me what the value of BTT,
19 VET, and StormX is on Voyager currently as part of your
20 estate, the total assets for those particular coins?

21 A I don't have the specific numbers in front of me. I
22 know they're in the tens of millions each.

23 Q Each or total?

24 A No, each. And to be clear, the 35

25 Q Okay. (indiscernible) exercise --

1 A Sorry. The 35 tokens that we were talking about, you
2 know, as Mr. Renzi put in his declaration, they represent
3 around 17 percent of the total assets on the platform today.
4 They do represent a number of tokens that happen to be more
5 illiquid. The large, well-known tokens like Bitcoin and
6 Ethereum or USDC, for example, are all supported. The 35,
7 based on the distribution, happen to fit in a bit of an odd,
8 sweet spot between being sizeable from a dollar value
9 perspective, but also being illiquid.

10 Q Okay. If there is a decision made to go to the toggle
11 and any of the estate assets are being sold at a 50 percent
12 discount, would any of the creditors have the first
13 opportunity to buy such discounted assets at that discount
14 price?

15 A Theoretically, they would have an ability to buy
16 anything that they want in the market. You know, the estate
17 --

18 Q No, no. The market's not offering the 50 percent.

19 A Well, there's a big difference, though, between buying
20 a small trade at a 50 percent discount and buying a very
21 large block trade for tens of millions or hundreds of
22 millions of dollars at those levels, so if there are
23 creditors that would like to have discussion around multi-
24 hundred million dollar block trades, I think we'd be happy
25 to have those conversations.

1 Q But we're not talking about hundreds of millions,
2 right? You said only 17 percent of the total value across
3 all 35 coins, (indiscernible) 75 -- 17 percent.

4 A Seventeen percent across all of the crypto currency of
5 the estate. It's across 1.2 to 1.3 billion.

6 Q So it's about 130 million, divided by 35 coins? Thank
7 you, sir. You also brought up as an example the illiquidity
8 caused the volatility that we experienced in the overall
9 market last night. Would you associate that with some event
10 of illiquidity or more of the revelation of the Congress
11 issuing the letter that they did last night to Binance
12 raising, you know, significant red flag?

13 A I can't --

14 Q It would be more credible for --

15 A I can't speak to exactly what drove the decline in the
16 market last night. The point that I was trying to highlight
17 is that within these markets and a big reason why you see
18 these big discounts in certain coins is that cryptocurrency
19 markets have historically been more volatile than what we
20 see in a lot of traditional markets, and these are markets
21 where you have a -- the largest token being Bitcoin with a
22 multi-hundred billion dollar market cap that trades tens of
23 billions of dollars a day that declined very material amount
24 of value in the course of minutes, and so, you know, as
25 market makers, for example, are looking at doing block

1 trades and quoting risk, for example, that's risk that they
2 then assume and they price for that.

3 And so you know, what they're pricing for in large part
4 -- and again, you know, what you see in a lot of instances
5 is there's higher beta, for example, between these illiquid
6 tokens relative to something like a Bitcoin. And so what
7 they're trying to work through is a dynamic of not being in
8 a position where, you know, they may acquire a block trade
9 and it could be down 20 percent after they've acquired it,
10 as a result of the trade.

11 And so that's part of what, you know, we've seen when
12 pricing these and to be clear, this is why we reached out to
13 multiple parties with very significant financial capacity to
14 be able to execute on these types of transactions. We did
15 not reach out to just regular parties. We reached out what
16 we understood based on discussions with people in the space,
17 to be, you know, some of the largest participants in this
18 ecosystem for doing these types of transactions. And we
19 received multiple ones --

20 Q So, thank you, sir --

21 A -- which also, you know, they weren't aware of what was
22 going on. They weren't talking to each other
23 (indiscernible) companies.

24 Q Thank you. You keep referring to the danger in
25 slippage of block trades going back to the (indiscernible)

1 just because we went through these numbers yesterday, I
2 believe the number was 91 million of SS for that particular
3 coin currently (indiscernible) Voyager. And you are tasked
4 with either liquidating, rebalancing or liquidation, you
5 know, action for this case.

6 Would you market the whole \$91 million as one block or
7 would you break it out, you know, 10, 20 different
8 transactions over a defined period of time?

9 A So I don't want to speak to specifics of exactly how
10 the estate is currently executing the transactions related
11 to the rebalancing, in part because what we don't want to do
12 is telegraph at this hearing anything that may adversely
13 impact creditor returns from parties who may be listening in
14 and trying to front run any of those transactions.

15 What I can tell you is that the Debtors and their
16 advisors -- and again, this is multiple advisors, not just
17 Moelis -- as well as the UCC's advisors in this instance,
18 M3, have been in complete coordination around the nature of
19 the transactions, the forum that we're doing them in, the
20 way that they are being executed, and it is being done in a
21 manner that allows for, you know, an attempt to obfuscate as
22 much as possible the nature of the trades that the Debtor is
23 doing in order to try and maximize value.

24 And it is doing it over, you know, what we're trying to
25 do is over a long enough period of time and this is why the

1 Debtor has been executing these trades upon, you know,
2 getting the ability to do such from the judge, over a long
3 period of time to try and minimize any of that negative
4 impact it may have on prices.

5 Q Yes, that sounds absolutely prudent to me. And so I
6 guess when you are taking such a thorough process of
7 breaking it out to where it does not move the market on any
8 given day or any given exchange, I still struggle to
9 understand how you come up with a 50 percent loss on that
10 transaction.

11 A So to be clear, you know as I was saying, we do
12 obfuscate trades and there are tokens that from what we
13 understand and what's been communicated to us, you know, the
14 levels that they're trading at today and what would be
15 required may already be pushing down prices potentially in
16 some of those, and so, you know, there would be a concern.

17 There's a big difference between doing, for example,
18 you know, a million-dollar or \$2 million trade on any one of
19 those tokens versus trying to be in a position where, you
20 know -- and so in that instance, let's say you moved from,
21 you know owning -- and these are all purely hypotheticals,
22 right? If, to the extent that the state owned 40 percent of
23 an individual token and it needed to own 30 percent post
24 rebalancing, that means it needs to sell 10 percent interest
25 over potentially a multi-week period.

1 To the extent that needs to go from 40 to 0, that's a
2 very different transaction. And in some instances, that's,
3 you know, what the estate is dealing with. Again, you know,
4 these are hypotheticals but it's the basis for the analysis
5 that was being done.

6 Q Okay, thanks for that. And -- sorry. I like to move
7 on to the other obstacle which is a new term for me. In
8 instead of KYC, it was KYT for the transaction. You said
9 that that prohibited, you know, the toggle or at least was
10 an obstacle to the toggle and would require liquidation of
11 all of these illiquid coins on Voyager. And (audio drops)
12 option or what was the other option there?

13 A So there were two primary issues. One is, the platform
14 itself, the code base, doesn't work to be able to distribute
15 those token in kind. And so, you know, to the extent that
16 you're familiar with different protocols and coins, right,
17 every coin is a little bit different and not all of them are
18 ERC-20s, right, and so in this instance, we have 35 tokens.
19 The code itself, the code base, does not have an ability to
20 distribute those tokens through the Bedrock code, which is
21 my understanding of how they -- they're able to distribute
22 those tokens back to the customers. It doesn't support
23 them.

24 And so it would require a rewrite of the code base,
25 with subsequent upgrades to be able to bring on additional

1 protocols to allow those tokens to be withdrawn. So that's
2 one leg of the issue. The second leg of the issue is the
3 KYT issue, which relates to the ability to actually validate
4 the party and the wallet address that you're sending funds
5 to and that has two elements to it.

6 One relates to, for example, the inability to
7 distribute those 35 tokens. The other also in part relates
8 to potentially unsupported jurisdictions and the ability to,
9 for example, return coins if the company didn't have a
10 platform to be able to return coins through.

11 Q So two elements. You said the technical foundation,
12 Bedrock and then the other one is, you know, the other
13 controls of understanding where the transaction is
14 occurring. And let's start with the first one, Bedrock.
15 Has anyone reached out to actually the originators, the
16 developers, the designers of Bedrock, which would be the
17 Ethos organization to be able to overcome this obstacle?

18 A The company has developers. It has acquired the
19 Bedrock code. It has maintained it. The people that we
20 talked were the management team of the company that operates
21 the code base today. This was made -- this was based on
22 representations that were made us, you know, by them and,
23 you know, our understanding is it would take some time to
24 potentially allow for that, to do those upgrades. And on a
25 prudent basis --

1 Q Yeah --

2 A -- to the extent that you're upgrading code base that
3 relates to a distribution, potentially, of a billion
4 dollars, I don't think that anybody would take a code
5 upgrade lightly to the extent that it could have, for
6 example, negative impacts. I mean, with debugging and you
7 never know what the follow-on impact could be, right?

8 Q So I'm not clear. Is the (audio drops) not originate
9 the code or is the challenge that the engineers who made
10 Bedrock refuse to collaborate with (audio drops) in
11 possession?

12 A That feels very leading. I don't think I said anything
13 about the developer is not willing to work on it. I was
14 making a statement around what we understood the timeline to
15 be for implementing that and what I was trying -- and I
16 apologize if I wasn't clear on this. What I was getting at
17 was more that implementing a code upgrade in the context of
18 the situation that we're in and the negative impacts that
19 getting that wrong could have, mean that the Debtor would
20 want to make sure that it's being very thoughtful.

21 The last thing that we would want, given the fact that
22 this a, you know, final distribution for all intents and
23 purposes for certain parties, would be in a situation where
24 somebody put in a bug and all of a sudden a creditor
25 received five times the amount of coins that they should

1 have because there was a follow-on impact. So this would be
2 something where to the extent that the company were to do an
3 upgrade on the code base like that, to allow for support of
4 additional tokens, it's not something that I think people
5 would take lightly in this specific instance.

6 Q Yes, security concerns, but still I haven't heard an
7 answer to my question if anyone reached out to the
8 developers (audio drops).

9 MR. SLADE: I object. Lack of foundation.

10 THE COURT: Overruled. Go ahead.

11 BY MR. HENDERSHOTT:

12 A I'm not aware of the company having reached out to the
13 original developers of the code base that the company
14 currently maintains.

15 Q Okay. Thank you. And then the second part of your
16 obstacle (indiscernible) was having to know the recipient of
17 the wallet. So I can go, the day before they blocked my
18 access, I can go in and transfer any of the supported coins
19 to my wallet. It's a single address. It doesn't vary as a
20 wallet address based on the coin.

21 So I'm not clear on how the Debtors in Possession can
22 actually buy the asset, put -- transfer it to their wallet,
23 and then find a third party when I enter a sell order,
24 transfer that asset to a other third wallet, or that they've
25 already validated the KYT for me whenever I want to do any

1 of the supported wallets. So can you highlight where the
2 obstacle is there?

3 A Yeah, it's a good question. So that the company has
4 historically operated, and this was the basis for why the --
5 again, this is my understanding. I can't, you know, purport
6 to have done a code review on this -- is that for those
7 unsupported tokens that can't be withdrawn and have never
8 been able to be withdrawn, the issue is that, and the way
9 that the company historically worked is that it works with
10 OTC market makers, for example, to do all sorts of
11 transactions, right?

12 And so the -- what would occur if you were to try and
13 buy one of these unsupported tokens historically would be
14 that you would put cash fiat into your account. You would
15 seek to buy that token. Voyager would have quoted you a
16 price for where that transaction would occur at. Voyager
17 then through its smart order router would do a trade with a
18 market maker on the other side.

19 They would do daily settlements at the end of the day
20 to actually settle dollar funds relative to coin, with the
21 coin in those instances for those unsupported wallets -- for
22 those unsupported tokens being transferred from a white
23 listed OTC market maker wallet to Voyager's wallet that is
24 held on fire blocks in that instance. So because they are
25 transacting with a white labeled OTC market maker with a

1 known wallet address, the trades are only occurring between
2 a handful of parties. The token, the coin transfer in those
3 instances is only between a limited subset of wallets and it
4 occurs once a day, effectively. It's not occurring on an
5 ongoing basis.

6 Q Right.

7 A So when you're removing coins, what the Bedrock code is
8 doing is -- and again, my understanding is that it's
9 validating every single transaction as it's happening in
10 small amounts and it has to be automated to do that, given
11 the number of customers and the number of coins that it
12 supports. There would be no way to do that manually.

13 Q Got it.

14 A Yeah.

15 Q So it's Bedrock that is the limitation? It's not
16 really about knowing --

17 A No, I wouldn't --

18 Q -- confirmation of the wallet because they've already -
19 - excuse me, sir, if they've already validated my wallet
20 address when they transferred the coin in Ethereum.

21 A That -- so that's not my understanding. My
22 understanding is that -- and I know, I understand this to be
23 the case, right. Not every wallet supports every type of
24 token, right? If I have an Exodus wallet, it doesn't
25 support every type of token. If I -- Binance doesn't

1 support -- or excuse me, Coinbase support every type of
2 token, right? So to say that you could just transfer to any
3 wallet, you know, I don't believe that to be the case, based
4 on my knowledge of how cryptocurrency works.

5 And my understanding as has been represented to me is
6 that a number of these tokens, for example, the third-party
7 provider that the company uses for that KYT validation on
8 the wallet that the funds are being transferred to does not
9 support all of those tokens, and so that party has to run
10 its own set of procedures. It's a third-party service
11 provider. I can't represent what those look like, but at
12 least what has been told to me is that they do not support
13 all of those tokens.

14 And so what it would require is potentially then
15 integrating new third parties that do this or other systems.
16 I don't know what that would ultimately look like but, you
17 know, I would imagine, for example, doing an API upgrade to
18 allow for a multi-party API authentication check between a
19 new third party that's being integrated for these purposes,
20 it's not a small task. At a minimum, I imagine it would
21 take months.

22 Q Yes, we've had nine months and so that -- would have
23 fit into the schedule. So thank you. If I can move on, I
24 know we want to move on to lunch break here. So just some
25 block and tackle type questions about your role as an

1 investment banker. What was the guiding document that you
2 were obligated to follow for, you know, the auction process?

3 A I'm not sure I follow. Are you talking about the bid
4 order or the auction procedures?

5 Q Yeah, the bidding (indiscernible). This was a real
6 guiding document that you had to follow that was approved by
7 the Court.

8 A Yes. There were -- and I apologize for forgetting the
9 exact name of the documents, but there were procedures that
10 were filed with the Court relating to bidding procedures in
11 -- and the auction procedures in connection with the
12 auction.

13 Q And when we have that guidance document approved by the
14 Court, did that dictate the terms of the action or are
15 bidders allowed to dictate their own terms in the auction?

16 A Auctions can be very complicated and so while the bid
17 procedures outline what a qualified bid would ultimately be,
18 it doesn't mean that parties that participate in the auction
19 will follow necessarily, all of those rules. The fact that
20 they may not follow all those rules does not necessarily
21 preclude us from potentially selecting the highest
22 alternative to the extent that that's the one that presents
23 itself. It's -- to a degree, there is a judgment call.

24 Q Right. Well, I mean, how far can you deviate from what
25 the Court approved bidding plan is? Of course, there's some

1 judgment. The Court approved the bidding plan intentionally
2 to protect the process, protect the estate; is that correct?

3 A I don't recall the exact specifics of the -- of what
4 was allowed under the bid procedures, but I would imagine
5 that it provides for that type of flexibility. I just don't
6 know. I don't know.

7 Q (indiscernible) the bid process?

8 A Yes, but this occurred months ago.

9 Q Okay. And so as part of the bidding plan approved by
10 the Court, was a backup bidder element, you know, standard
11 in that plan or not?

12 MR. SLADE: Your Honor, I object. This is not
13 relevant. We discussed this yesterday.

14 THE COURT: I'll allow --

15 MR. HENDERSHOTT: Yesterday, Your Honor, BRG could
16 --

17 THE COURT: I'll allow a few questions on it. Go
18 ahead.

19 BY MR. HENDERSHOTT:

20 A So the --

21 MR. HENDERSHOTT: Thank you, sir.

22 BY MR. HENDERSHOTT:

23 A -- bid procedures did my recollection is that the bid
24 procedures did require qualified bids to act as a backup
25 bidder to the extent that they were to be viewed as a

1 qualified bid. That's my recollection.

2 Q And so can you share with us who overrode that
3 critical, pretty standard -- well, first of all, isn't that
4 a standard element of an auction bidding process?

5 A It's something that is often asked for. It's not
6 always actually abided by.

7 Q We just -- as Mr. Slade just said, we did discuss this
8 yesterday but we couldn't get confirmation. We were told
9 that Binance refused to comply with the bidding plan. We
10 couldn't get confirmation on the other four bidders. Do you
11 have a better recollection of the FTX auction and the four
12 other bidders, what their refusal or acceptance as a backup
13 bidder was?

14 A At the end of the auction, there was no party that was
15 willing to be a backup bidder that conformed with the
16 requirements of an order entry. So there was no ability to
17 --

18 Q So --

19 A -- appoint a backup bidder at the end of the auction.

20 Q Being professionals in a corporate auction
21 (indiscernible) activity which I've sat across your team
22 many times, is there an attempt for a backup bidder to
23 introduce competitive tension to ensure that the best bid
24 and the most efficient bidding process is concluded with the
25 first round of bidding and the competitive tension forcing

1 each bidder to give the best offer at the first round of
2 bidding?

3 A It's one of many factors. The reason we ran an eleven-
4 day auction which is unprecedented as far as auctions occur
5 was to maximize that competitive tension and I can at least
6 represent from the beginning of where the auction started to
7 the value that was ascribed to the winning bid, it was
8 increased in many multiples on a dollar value basis. We ran
9 a, you know, in our judgment, a very competitive, long, hard
10 auction option to try and drive as much value as possible.

11 Q Well, I'm confused, though, because if compliance with
12 the written plan was actually followed, the original bid of
13 Binance was 50 million would have returned more creditor
14 value than the follow-on bidding cycle of 20 million. Do
15 you see that differently, sir?

16 MR. SLADE: Your Honor, I object. This is not
17 relevant.

18 THE COURT: Go ahead and explain.

19 MR. HENDERSHOT: It is relevant, sir and --

20 THE COURT: No, no, no, no -- I've overruled the
21 objection. I'm ask -- I'm telling the witness to go ahead
22 and explain just what happened. Why did we not have a
23 backup bid from Binance at that time? Did they --

24 THE WITNESS: We did not have a backup bid from
25 Binance at that time because their final bid included a

1 provision to the extent that they were a backup bidder, that
2 would have required an expense reimbursement that did not
3 conform with the bid procedures. And so they were not
4 selected as a backup bidder at that time because it was not
5 a bid that confirmed with a ability to actually enter to the
6 extent that we were to select them. In hindsight, we wish
7 that we had them as a backup bidder and had paid for it, of
8 course, and in light of what happened with FTX, of course,
9 we wish that we weren't in this situation.

10 THE COURT: So in other words, they said to you,
11 were not willing to make a qualified bid. We'll make a bid
12 on different terms.

13 THE WITNESS: And we want to be paid. Basically,
14 they said that they want to be paid to be a backup bidder
15 which is not something that is standard in the auction
16 process.

17 THE COURT: Right. So they gave you the option to
18 seek a variation from the bid terms and try to entice you
19 with a deal, but it wasn't actually something that you had
20 the ability to accept and make them an automatic backup
21 bidder; is that right?

22 THE WITNESS: That's correct, Your Honor.

23 THE COURT: Okay. Does that explain things, Mr.
24 Hendershott?

25 MR. HENDERSHOTT: It does, thank you. Thank you

1 both for that.

2 BY MR. HENDERSHOTT:

3 Q So what I'm hearing then is there's no qualified
4 bidders, backup bidders, at the FTX round.

5 A Well --

6 Q Is that correct?

7 A I think there's a difference -- I mean, obviously, the
8 bid that we accepted we viewed as being a qualified bid
9 because we ultimately entered it, but it was viewed as the
10 highest and best at that point in time, based on facts and
11 circumstances at that point in time.

12 Q But not in compliance with the bid plan.

13 A Excuse me, I couldn't hear that.

14 Q Is that correct?

15 A I'm sorry, I --

16 Q Bids were not in compliance -- yeah, not in compliance
17 with the bid plan which calls for backup bids.

18 A Well, if that were the case, we wouldn't have an
19 auction at all.

20 Q Right, because there was no qualified bidders according
21 to the bid plan. Then would that logically then lead the
22 discussion to go into the toggle option at that point when
23 there is no qualified bidders?

24 A Well -- and again, I want to be clear. When, you know,
25 the focus is very much on the backup bid right now. We went

1 into an auction. We had received bids. They had
2 qualifications relating to parties acting as backup bidders
3 or not. I can represent that this was a very much discussed
4 topic at the auction. Again, we ran an eleven-day auction.
5 It was not something that was missed by parties. The view
6 was, you know, while people were expressly unwilling to do
7 this despite every attempt from the Debtor to try and
8 actually get also a party to act as a backup bidder and we
9 tried a number of different strategies in order to try and
10 have that happen.

11 We ultimately drove the price up. We, you know, had
12 the situation that we did, which was we appointed FTX based
13 on the facts and circumstances at the time, the nature of
14 their bid, and decided to move forward with that and did not
15 have any other parties that were backup bids because they
16 would have required, for example, the expensive
17 reimbursement.

18 So we were unable to select one. But with that said,
19 said because of the dynamics at the auction and the
20 competitive tension, again, we drove up the purchase price
21 at that auction multiple, multiple times over where the
22 auction value started at.

23 Q Okay. I mean, (indiscernible). I appreciate that
24 clarification, the insight. Again, block and tackle, how is
25 the contract between the Debtor in Possession and yourselves

1 structured, you know, from a -- is the payment and
2 compensation a time and materials or is it a event-based
3 payment structure?

4 A I believe our engagement letter is publicly filed, so
5 it depends. We have a --

6 Q I --

7 A From Moelis' perspective, we have a monthly retainer
8 fee that we are paid and then there are different types of
9 transaction-based fees.

10 Q Okay. So I guess I'll be more specific. I've heard,
11 and I don't recall reading your specific contract that the
12 transaction is a combination of an acquisition
13 (indiscernible) \$12 million payout; is that correct?

14 A In a sale transaction? I --

15 Q Yes, for a transaction payout --

16 A I believe that's correct.

17 Q Okay, thank you. Is that transaction payout still in
18 effect if the Binance deal does not go through and we move
19 to a toggle?

20 A There is a, I believe, a different feature, to the
21 extent that that would occur, be a restructuring
22 transaction.

23 Q And forgive me for having you repeat. You said it was
24 public information, could you just share with me what that
25 alternative transaction structure is?

1 A I believe our fee declines by a million dollars. It's
2 a \$12 million to an \$11 million fee.

3 Q Okay, so 12 million if a purchaser is achieved, \$11
4 million if we go to a toggle.

5 A That would be my understanding, yes.

6 Q Okay. So -- and thank you for that. So is there an
7 estimate -- there's only \$1 million difference there, so --
8 and I'm not saying what the outcome is going to be, but with
9 the monthly retainer fees and the transaction fees
10 cumulatively, do you just have a round estimate of what the
11 total value of your contract is going to be with the Debtors
12 in Possession?

13 A I apologize. I don't off the top of my head.

14 Q Well, you know, we can start with 12 and 11 then, as a
15 base. Is there -- can you share what the monthly retainer
16 is?

17 A I don't recall what the monthly retainer fee is. I
18 don't. I know --

19 Q Is there other transaction --

20 A Excuse me?

21 Q Is there other transaction fees besides the 11 or 12
22 million?

23 A Not transaction success based fees. My recollection of
24 our engagement letter, which is tradition and, look, was
25 negotiated on arm's length basis as well with the UCC and,

1 you know, other parties, is traditional and market based for
2 situations like this. And typically, you know, in this
3 instance, the, for example, oftentimes fees are negotiated
4 relating to things like DIP facilities or an ability to
5 raise equity capital. Obviously, in this instance, none of
6 those transactions would contemplate that.

7 Q Safe to say it's 15 million cumulative?

8 A That feels high based on the number of months and
9 crediting features, but I -- again, I don't have our
10 engagement letter in front of me so I apologize. Like,
11 speaking to the exact numbers, I just can't. I can't speak
12 to that.

13 Q So the reason why I'm asking is you presented that the
14 Binance deal is the best one for the creditor class because
15 of the guaranteed \$20 million payout and (audio drops)
16 another \$80 million (audio drops) value. But (audio drops)
17 \$20 million if \$60 million of that is going from the
18 wallets, including my calculations that's a 75 percent cost.

19 You know, on ROI I'm receiving 20 million. I've
20 (indiscernible) frequently. I never recall paying 75
21 compensation for any deal we engaged in and I'm curious. Can
22 you tell me what, you know, percentage-wise, how frequently
23 your clients ever accepting a 75 percent cost to any deal
24 they negotiate with you?

25 THE COURT: I will -- I see an objection coming

1 and I'll overrule it. You completely misstated his
2 testimony, Mr. Hendershott.

3 MR. HENDERSHOTT: I'm sorry, I misstated it?

4 THE COURT: Yes, you did.

5 MR. HENDERSHOTT: Okay, can -- help me if you
6 would, \$20 million payout from Binance is --

7 THE COURT: You've misstated it to suggest that
8 the \$20 million goes entirely to his fee as though that fee
9 wouldn't otherwise be there anyway, which is wrong. Okay?
10 You've suggested that --

11 MR. HENDERSHOTT: No --

12 THE COURT: -- there's only a \$5 million
13 incremental value which is flatly contrary to what he's
14 testified. His fee is there, whether there's that \$20
15 million or not. It's a \$1 million difference, is what he
16 testified to. So if you go to the toggle, his fee is \$1
17 million less. So if you go to the Binance deal, essentially
18 what he's testified to is since his fee would be slightly
19 higher, there'd be a \$99 million advantage instead of \$100
20 million. That's what he's testified to.

21 MR. HENDERSHOTT: Okay. Thank you for the
22 clarification, sir. Thank you, Mr. Tichenor. I cede the
23 podium.

24 THE COURT: Okay, before we have any other
25 questions, we'll take our luncheon break and we'll resume at

1 2:45.

2 (Recess)

3 THE COURT: Before we continue with the witness
4 examination, I have a question for the Debtors' attorneys
5 and for Binance's attorneys. We've had an awful lot of
6 questions about due diligence matters and about Binance's
7 practices in certain regards and it sounds like from what
8 the witness is saying, Binance has been willing to give
9 sworn statements to the Debtors on some of these points, but
10 I don't have them. I don't have any declaration. I have no
11 Binance witness. I don't even have copies of what Binance
12 has given to the Debtors.

13 What would be so hard about filing a declaration
14 on behalf of Binance that simply says that that with respect
15 to customers, Binance maintains assets on a one-to-one ratio
16 with respect to customer deposits and intends to continue to
17 do so; that it keeps customer cryptocurrency in separate
18 wallets segregated from other cryptocurrencies, that it does
19 not lend or rehypothecate customers' cryptocurrencies; that
20 no one outside Binance.US has access to the keys for the
21 customer wallets; and that Binance.US intends or its current
22 practice and its intended future practice is to transfer or
23 use customer cryptocurrency only as directed by the
24 customers themselves?

25 I mean, I've had repeated testimony that that's

1 how it's done, that Binance has said that's how it's done.
2 That's what everybody here seems to want to have some
3 verification of. What's so hard about putting that in a
4 declaration and filing it?

5 MR. SLADE: So Your Honor, Mike Slade for the
6 Debtors. Obviously, that's up to Binance. It would be
7 great if they did that. In our discussions, I mean -- and I
8 think some of the cross examination has borne that out that
9 I think if their witness was -- were to swear to this, were
10 to be subject to cross examination, which would be as broad
11 in scope as some of the cross examination that has occurred
12 during the past couple of days --

13 THE COURT: Well, you know, I've allowed an awful
14 lot of questions and I think that the kind of questions and
15 torment that the witnesses have gone through would probably
16 scare anybody off on willing to say anything, but I'm not
17 asking for that. I'm just asking for a sworn declaration
18 for what presently is just hearsay, something I can rely on
19 that is by way of verifying what they have already told the
20 Debtors.

21 MR. SLADE: We understand the request.

22 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
23 and Watkins on behalf of Binance.US. So may I just ask Your
24 Honor a question? Because I understand that -- I'm just
25 confused as to whether it's just a statement to the Court

1 for the Court's benefit or whether the -- whoever the
2 declarant, would be exposed to cross examination?

3 THE COURT: I'm not anticipating cross
4 examination, I'm just, for my own comfort, asking for a
5 sworn statement to verify what has already been told to the
6 Debtors.

7 MR. GOLDBERG: Thank you for that clarification,
8 Your Honor. Please allow me to consult with my client.

9 THE COURT: Okay.

10 MR. GOLDBERG: Thank you.

11 THE COURT: All right. It would give -- it would
12 help me a lot because I'm -- it's odd. It strikes me as
13 extremely odd to have so many questions raised about
14 relatively straightforward business practices and to have
15 nothing but hearsay and no Binance witness or a kind of
16 verification at all, seems odd to me.

17 MR. SLADE: Completely at their request, Your
18 Honor. We made it prior to hearing and I think the
19 reluctance is for the reason that I stated, that you never
20 know how broad the cross examination would get.

21 THE COURT: Right. Okay. All right, back to Mr.
22 Tichenor. Is there anybody else on the phone now who wishes
23 to cross examine?

24 MR. RIZK: I do, Your Honor.

25 THE COURT: Who is this?

1 MR. RIZK: My name is Andrew Rizk. I'm a
2 creditor.

3 THE COURT: Okay, please proceed.

4 MR. RIZK: Okay, I just got two -- I just have two
5 really quick questions.

6 CROSS EXAMINATION OF BRIAN TICHENOR

7 BY MR. RIZK:

8 Q One, you know, if you were in kind of our shoes as a
9 creditor and had the knowledge that you have of this
10 potential sale transaction, what would be your personal
11 concerns or fears, if any, of this going through?

12 A I think, you know, things that we believe and
13 understand the creditors care about are items -- you know,
14 threefold, I would say. One, you know, we understood from
15 the onset of the case that speed and the ability to return
16 funds to people as quickly as possible was paramount. It
17 was a focus that we had. It was very much -- I think we
18 were aligned with the UCC around that. We sought to do
19 everything possible from the very, very beginning of this
20 case to try and do that.

21 Unfortunately, obviously, there were things that
22 happened with FTX that set that back, but we do understand
23 speed is an important dynamic. I think, you know, our
24 understanding is that the ability to get in-kind recoveries
25 is very important. There are people that have very low tax

1 bases, for example, in these assets and we do understand the
2 nature of a lot of the underlying. They bought the crypto
3 with the understanding that that was what they were going to
4 get back.

5 I personally would think if I -- I'm a customer of E-
6 trade, right, and if I had a share of GE and there was a
7 problem with E-trade, I wouldn't want something different
8 than that back. That's, you know, what I thought was mine
9 at that point in time. And so, you know, we are trying to
10 do that in the contours of the Bankruptcy Code and I think
11 the other thing in it was recovery value. We've -- you
12 know, I personally listen to a lot of Twitter spaces
13 including the UCC's ones.

14 I listen to a lot of the other ones. You know, we
15 follow social media channels like -- you know, we do
16 understand and hear from creditors that people have faced
17 pain associated with this situation. This has not been
18 easy for people. And we do care about trying to maximize
19 value and that's something that we've been focused on. And
20 that's part of the reason why we're presenting these two
21 options.

22 We believe one of them potentially provides for a
23 higher recovery value, but we understand that there may be
24 potential risks associated with that relative to a self-
25 liquidation. But what we did not do during this was run a

1 long process and try and restart everything upon the failure
2 of FTX. We engaged immediately in discussions with people
3 that we knew were aware. We had additional inbounds. We
4 ran that down as fast as possible and we -- I would say too,
5 I don't believe that the timeline that we're working off of
6 is any different than what would have happened if we had
7 also chosen to potentially pivot to a self-liquidating
8 toggle post that collapse.

9 There was a lot of work that was even done post that,
10 around what self-liquidations could even look like with all
11 these factors in mind. So, look, to me, those were things
12 that I think, you know, I would be thinking about and I
13 appreciate, too, the counterparty elements are going to be
14 important, which is why we have also tried to engage in
15 diligence on the nature of the counterparty asking
16 questions, asking important questions around safety and
17 soundness. Those are all things that I would imagine
18 creditors care about in this situation.

19 Q Right. So you mentioned the potential, you know, with
20 this, with the sale, the potential sale, there's potential
21 risks. You know, just from a layman, not really
22 understanding all the lingo in the disclosure statement,
23 what are some of those risks with the sale transaction?

24 A Look, I think --

25 Q In your opinion.

1 A -- that's the basis for a lot of the discussions that
2 we're hearing today. I think that the primary risk would be
3 around comfort levels with moving forward with the
4 counterparty and having sufficient diligence being completed
5 that on a risk-adjusted basis, the value associated moving
6 forward with the sale relative to pursuing the self-
7 liquidating toggle is ultimately worth it.

8 And that's something that, you know, that decision
9 isn't going to be made today, but will be several weeks from
10 now and is not something that I think we would take lightly.
11 I think there will be a lot of consultation with the UCC,
12 other advisors that are involved in this process, and
13 obviously, ultimately, the board of directors of Voyager
14 Digital LLC.

15 Q That's understood. Thank you for that response. The
16 last question I have, I wasn't understanding yesterday when
17 I was listening in, so the 73 percent recovery that was
18 mentioned on the call would be the potential recovery if the
19 sale goes through, but Alameda is not successful in clawing
20 back whatever they're trying to claw back. But if they are
21 if they are successful, I heard 24, 26, 48 percent. What is
22 it? What's that going to be if they're successful in
23 clawing back the 400 million or 75 million or combined or
24 whatever it is they're trying to claw?

25 A Yeah, and I apologize, because I don't remember the

1 exact number that was quoted at the hearing yesterday and I
2 apologize for that. My recollection is that it's in the
3 mid-40s. I want -- believe it was 44 percent, I'm not
4 mistaken.

5 Q So if they're successful with that -- I saw online
6 initially it was 26 percent, but --

7 A Yeah.

8 Q -- I think you guys liquidated or gave some money back
9 during your selloffs, recent selloffs. So that 24 percent
10 is now -- so if this sale goes through as a creditor, worst
11 case I'm getting 48 percent of my money, best case I'm
12 getting 73 percent?

13 A Well, so there are a number of factors, right? And so
14 I think one of the big differences is that in the initial
15 disclosure statement as people were looking at the
16 recoveries and the basis for that mid-twenties number which,
17 you know, we did see and I followed that closely on Twitter,
18 for example, because I know it's been quoted a lot. The
19 basis for that is based on the 1.002 billion of estimated
20 crypto value owned by Voyager based on -- I believe it's a
21 30-day market average on December 18th.

22 And so from a market value perspective what has
23 happened is that the price of cryptocurrency fortunately has
24 increased quite a bit over the period. And so when we look
25 at the recoveries today, those are based on current market

1 prices as well. That mid-40 is now adjusted real time as
2 well leading up to ultimately a distribution. We don't
3 really know what that number is ultimately going to be
4 because the prices used for determining those values will be
5 based on future market prices that we don't have yet. So it
6 could move up, it could move down. It depends on what
7 happens with crypto.

8 Q Okay. But as of yesterday, whatever it was when we
9 were talking, it was worst-case 44, best case 73?

10 A Those numbers sound correct. But again, I don't have
11 the exact numbers in front of me.

12 Q Yeah, that's fine. I'm just trying to understand. I
13 saw the formula and I get how it's calculated. And then I
14 think that's pretty much the questions that I had. Thank
15 you for your time. Thank you, Your Honor, for letting me
16 speak.

17 THE COURT: Just to make sure -- thanks. Just to
18 make sure everybody who is listening understands Mr.
19 Tichenor, we're not saying that the initial distributions,
20 the first distributions would be 73 percent. There have to
21 be reserves while these issues are discussed so that the
22 first distributions would be more in line with what the
23 minimums are that we've been talking about, right?

24 THE WITNESS: That's absolutely correct, Your
25 Honor. And so the way that it would work under the plan is

1 based on the proposed settlement with FTX around these
2 matters would be that of the crypto broadly speaking that
3 the estate has, it would need to sell effectively an
4 additional 445 million in volume to cash holdbacks to
5 potentially deal with FTX-related clawback issues. To the
6 extent the estate succeeds on that basis, those funds then
7 would be subsequently distributed on a cash basis and we
8 could discuss if there was a new accounting ability to do
9 that. But I think the operating plan would be that it would
10 be a cash -- future cash distribution to creditors of that
11 value. So you should think of it as that mid-40s under any
12 scenario is likely what's going to be distributed up front.
13 Again, dependent on market movement. And then there would
14 be a subsequent cash distribution to the extent the estate
15 wins around those ultimate points.

16 THE COURT: Thank you. All right. Is there
17 anyone else on the phone who would like to ask questions of
18 Mr. Tichenor?

19 MS. DIRESTA: Yes, Your Honor. My name is Gina
20 DiResta. I am a pro se creditor. I would like to speak.

21 THE COURT: Yes. Do you have questions or are
22 you...

23 MS. DIRESTA: Yes, yes. I'm sorry, I'm just
24 pulling up my notes.

25 BY MS. DIRESTA:

1 Q So yesterday when the BRG gentleman was the witness, I
2 had asked him some questions and he said something different
3 from this witness today. I am a creditor who does not want
4 to open a Binance account and I just want to get cashed out.
5 And I also don't want my KYC or any other kind of
6 information to go to Binance. But unfortunately, yesterday
7 it was said that I don't have a choice in that, that all of
8 my information is going to go to Binance anyway.

9 But then I had asked if I'm getting cashed out, does
10 that mean that I am just -- that -- will my assets get
11 transferred to Binance and then Binance cashes it out and
12 then gives it back to Voyager and then Voyager cuts me a
13 check?

14 And the BRG gentleman said that my assets would stay at
15 Voyager and then Voyager would cash me out and then I would
16 get a check that way. But then today when you were being
17 asked a question, you said the opposite. You said that my
18 assets would get transferred to Binance nonetheless and then
19 they would cash out my assets and I'm assuming then give it
20 back to Voyager and then they cut me a check, which just
21 seems so time-consuming and ridiculous. I just don't
22 understand why I can't just keep my private information, all
23 of my KYC, my banking information, my driver's license
24 picture, all that stuff. I don't see why that has to be
25 transferred to Binance. I don't see why my assets have to

1 be transferred to Binance if I just want to get cashed out
2 and I want absolutely nothing to do with Binance.

3 A I appreciate the concern. The terms that we negotiated
4 in the APA with Binance were ultimately that they deeply
5 cared about the ability to potentially market to customers
6 is the primary consideration from their perspective. There
7 were a number of items within the APA that were hard fought.
8 There is no situation ever from an M&A negotiation
9 perspective where you get everything that you want. So
10 there were tradeoffs that were made. And so under the
11 proposal and terms of service that Voyager has, it has an
12 ability to sell customer information. That was critically
13 important we understood from a value perspective for
14 Binance. Do I wish we could potentially have something
15 different? Of course. But this was the deal that we
16 ultimately negotiated and agreed on with them that provides
17 for both of those elements. The estate has the ability to
18 sell the information under the terms of service. It was
19 something that they were seeking, and that was the deal that
20 ultimately -- you know, we felt like this was a value-
21 maximizing potential alternative that would provide for
22 enhanced recoveries. And those were some of the tradeoffs
23 that we had to make.

24 Q So then for me, what is the process since, like I said,
25 everything is going to Binance whether I want it to or not.

1 Do I just sit around for three months and then after the
2 three-month period Binance cashes me out? And then who
3 sends me the check? Or do I have to do anything to express
4 that I want to be cashed out?

5 A On your last point first, maybe I'll address that. I
6 don't know the answer to whether or not you have to do
7 anything to be cashed out or not. I would have to review
8 how that's contemplated under the plan. I imagine that
9 there's a mechanism that wouldn't require you to necessarily
10 do anything. But I do want to be honest, I don't know the
11 answer to that. So I would recommend reviewing the plan. I
12 think there's a customer migration protocol that's been
13 published. So I would look at the Stretto website for
14 additional information on that.

15 With regards to the mechanics of how the crypto
16 transfers would work in the instance that a customer chooses
17 not to migrate. So -- and maybe I'll start with how the
18 migration works for customers that do sign up.

19 So if a customer does sign up, they would go through
20 KYC procedures on Binance.US Upon that customer being
21 validated as a Voyager customer, Voyager at closing or at a
22 period thereafter, at least one week, Binance.US would
23 transfer that user's crypto associated with that account to
24 Binance, who would then distribute that to the customer's
25 account directly. So at that point, you know, inherently

1 you would have been a Binance.US customer prior to any of
2 the funds being transferred to Binance.US associated with
3 your account.

4 To the extent you choose not to and you don't want to
5 migrate, you don't open an account, the crypto associated
6 with that does not leave Voyager for that three-month
7 period. Voyager will continue to hold that crypto on fire
8 blocks in its other third-party services or exchanges to the
9 extent that's the case. It will not migrate to Binance.
10 And at the end of the three-month period for those parties
11 that are in supported jurisdictions under the existing APA
12 or proposed plan, the way that that would work is that user
13 base's crypto would then transfer to Binance and would be --
14 Binance would ultimately sell that crypto on behalf of the
15 Debtor effectively and then transfer back the cash proceeds
16 associated with it.

17 And then Voyager would ultimately cut checks. I can't
18 speak to the party that would be acting in that regard. I
19 just don't know.

20 Q Okay. Got it. So my next question. So on March 1st
21 the U.S. Senate Office, they issued a letter addressed to
22 both Binance and Binance.US. And I'm just going to read one
23 sentence from that letter. And it says, "Binance now faces
24 investigations into criminal sanctions evasion, money
25 laundering conspiracy, unlicensed money transmission,

1 questions about its financial health and increased scrutiny
2 over its intentionally-opaque corporate structure. So
3 within that letter -- so that's -- you know, that's pretty
4 heavy allegations. And in that letter, they asked for a
5 bunch of production of documents with a deadline of March
6 16th, which is just about two weeks away. So let's say
7 March 16th comes and Binance does not provide those
8 documents. How does that affect the Voyager deal?

9 A So the letter was news to use yesterday, too. So after
10 I left the courtroom yesterday, we found out about it last
11 night. Obviously in light of that, there were a number of
12 discussions in the evening as well as this morning.

13 To be clear, we are still digesting that as well. It's
14 new information from our perspective. Look, I think it
15 relates to statements that we had made this morning around -
16 - you know at this point in time, are we ready to move
17 forward with Binance? No. There is still incremental due
18 diligence that would need to be done in order for us
19 ultimately to feel comfortable moving forward on that basis.

20 The plan now, which has the support of 97 percent of
21 the creditors, provides for this backup option, which we
22 think is greatly important. And so ultimately that
23 determination around whether or not we'll move forward with
24 them is likely to be several weeks down the road. I in my
25 personal view don't see a scenario where we likely would be

1 able to close ahead of the 16th. And so would that
2 potentially be a factor and it goes into our decision? Of
3 course it would. But there is additional work that we need
4 to do. We plan on having conversations with them. We had a
5 conversation with them this morning about it. But there is
6 more work to do there. And at this point in time, I'm not
7 in a position to say exactly how that is going to play out
8 at a future point. But I can tell you we're going to do
9 work. I know the other parties that are advisors in this
10 case are going to continue to do work as well. We'll work
11 in consultation with the UCC and ultimately it will be a
12 recommendation and a determination by the Board at that
13 point in time, which is likely to be after the 16th.

14 Q Okay. And then assuming that -- I heard said earlier
15 that if an order isn't entered into by Monday, which is
16 March 6th, that Binance can pull out of the deal and it
17 triggers the reimbursements. I don't understand what that
18 is. Can you explain that to me?

19 A I'm not as familiar with the specifics of that. I
20 would have to ask counsel on the exact timing.

21 THE COURT: Can one of the Debtor's counsel just
22 explain that provision to deal with that question?

23 MS. OKIKE: Yes. So there is what's known as a
24 milestone in the APA and it requires us to have the order
25 confirming the plan entered and approved by the Court by

1 March 6th. To clarify one of my prior statements, taking a
2 look at it over the break, it's unclear whether that
3 actually -- the failure of the entry of an order by that
4 date would trigger the expense reimbursement. There is a
5 requirement under the APA to have that order entered by
6 Monday.

7 MS. DIRESTA: And can you explain to me what it
8 means by expense reimbursements?

9 MS. OKIKE: Yes. So there is a provision in the
10 APA which was approved when we got authority to enter into
11 the APA which provides for reimbursement of Binance's
12 expenses up to \$5 million in certain circumstances where the
13 APA is terminated.

14 MS. DIRESTA: Okay. Thank you.

15 BY MS. DIRESTA:

16 Q So now back to Mr. Tichenor. Earlier I think I heard
17 you correctly, so correct me if I'm wrong. But it seemed
18 like you said when the topic was about the toggle plan, it
19 seemed like you said Binance offered their services to help
20 with the Toggle plan. Is that correct?

21 A They have agreed to offer services to assist in the
22 toggle plan. That's correct.

23 Q Okay. So if that's the case, then instead of -- if we
24 do the Binance deal, then all of the coins and tokens are --
25 can be transferred, right? That's what everyone keeps

1 saying, that that's one of the benefits of the Binance deal,
2 that with the toggle option, there are 25 unsupported
3 tokens. And if Voyager went through the time and effort to
4 make them supported, it would take six to nine months and,
5 you know, cost millions of dollars. And if it was
6 liquidated instead of becoming supported, if it was
7 liquidated, then it's like we're moving about \$60 million,
8 about \$100 million loss that you were talking about earlier
9 with the toggle option.

10 But instead of cashing it out, if Binance is offering
11 to help with the toggle option and they have the ability to
12 deal with the unsupported coins, couldn't they then just
13 help out with that portion?

14 A So that's not something that we have specifically
15 discussed with them. So I would have to ask around their
16 willingness or desire to do something like that.
17 Additionally, candidly, I think we'd have to do some
18 additional work on our side to understand what the financial
19 implications and operational logistics of that kind of
20 construct would ultimately look like. The plan construct
21 that we put forward was relating to either we feel
22 comfortable with Binance as a counterparty and we would
23 potentially pursue a deal with them in the context of that
24 being a value-maximizing solution or we don't. To the
25 extent that we don't, to me it would on the surface feel

1 potentially a little unfair to those customers to say, well,
2 for those 35 unsupported coins, we're uncomfortable moving
3 forward with that counterparty to do the X, Y, and Z factors
4 for everybody else. But for you, you have to. You know,
5 that to me also feels like an unfair tradeoff or unfair
6 treatment potentially of those customers relative to
7 everybody. To me, it's more of probably a binary decision.
8 Either there's enhanced recoveries or there are not enhanced
9 recoveries.

10 Q Okay. I understand your point. But is it something
11 that you guys would look into? And not even just Binance.
12 Because, you know, there might be other exchanges out there
13 who would support those 35 unsupported coins. Would you at
14 least look into that option as well?

15 A I can take this back and have a discussion internally
16 around that. I would have to --

17 Q Okay. Okay, great. Thank you. Okay. Give me a
18 second as I go through my notes here.

19 During your due diligence with Binance, did you guys --
20 did Binance provide documentation showing both assets and
21 liabilities?

22 A So we reviewed the -- excuse me?

23 Q I didn't say anything.

24 A Okay. Apologies. I thought I heard something. So
25 during our due diligence with Binance, we reviewed the

1 audited and unaudited financial statements which would
2 include both their assets and their liabilities from a BAM
3 Trading Services perspective. One thing to note is because
4 of the way that they treat their customer crypto, for
5 example, for audited financial statements, the way that it
6 works is that to the extent that you view something as a
7 custody relationship let's say, to the extent that you don't
8 view yourself as having ownership rights over underlying
9 crypto as an example, right? The audit standards would say
10 that that is not property of that business and so therefore
11 those assets don't get consolidated in. That said, they are
12 disclosed via footnotes. And so to the extent the question
13 relates really to one element from a reserve perspective on
14 crypto, that's not something that would be disclosed as a
15 separate set of information, audited financial statements.
16 And I'm not aware of the standards requiring that. But we
17 did review the assets and liabilities of the business as
18 (indiscernible).

19 Q Okay. My next question is earlier in this hearing, the
20 SEC was asking a bunch of questions. And the first line of
21 questions was about the due diligence that you guys did with
22 the crypto security protocols and all the different meetings
23 that you guys had, the wallets and the transfers and all
24 that stuff. And when he was asking who all was part of the
25 meeting, you said that people at Moelis and some of the

1 attorneys and other advisors were there. And when he asked
2 who from Voyager attended, the only name you provided was
3 the CEO's name, Steve Ehrlich. Can you remember any other
4 employees from Voyager attending those cryptosecurity
5 protocol meetings?

6 A Well, I want to be clear. I want to make sure from
7 Steve's perspective with regards to attending the meetings.
8 I would have to go back -- I don't know if he attended the
9 meetings directly. It's not uncommon, right? And from a
10 confidentiality perspective it would not be uncommon for
11 something where a counterparty relating to something with
12 this level of potential concern would want to limit it to a
13 professionalized-only basis. And so oftentimes what that
14 means is that it's limited just to parties that operate in -
15 - and if you're familiar with -- like this is part of our
16 core business, is maintaining confidentiality.

17 And so what I want to be clear on is we had discussions
18 with the management team around information that we learned
19 around those discussions. We've had discussions with a
20 number of parties. You know, as I said, the company -- we
21 discussed at the board level, we discussed it with other
22 professionals. We compared it to how we understand other
23 organizations to work. So it's not like this is just
24 something we're -- you know, we left it at that level. We
25 went out and compared that to how we understand other crypto

1 businesses and plans to operate and be able to compare that
2 and say, look, is this standard? Do they feel like they
3 have more (indiscernible) or less (indiscernible), right?
4 There's dynamics there too that we wanted to make sure we
5 were also independently checking and verifying beyond
6 discussion with management and the consortium of
7 professionals involved in this situation.

8 Q Okay. Because during the SEC's lines of questioning,
9 it seemed like they were trying to determine if you guys
10 basically had had any crypto experts that was able to verify
11 all of the information that Binance was giving you.
12 Because, you know, he was asking questions like, you know,
13 what is this certificate versus that certificate and how do
14 you know that, you know, it's good and that kind of stuff.
15 And he was kind of asking kind of the same stuff I'm
16 wondering too. If you guys had crypto experts, and you said
17 you guys didn't hire any crypto experts. So I'm just
18 wondering, like, who really reviewed all of the
19 cryptosecurity protocols if you guys didn't hire any
20 experts. And let's say the chief technology officer of
21 Voyager was not a part of the meetings and stuff like that.

22 A So it's a good question. What I would say is we -- and
23 to be clear too, we did this work as an investment bank and
24 this is generally well outside the scope of things that are
25 covered from a diligence perspective that we do. But, you

1 know, we sought to try to confirm these elements because it
2 was important to us from a counterparty due diligence
3 perspective to be able to say that we were doing the work.
4 We've continued to have conversations with them around these
5 elements. There are generally a lot of concerns that people
6 have around sharing of this type of information too from a
7 security perspective. And I say this because even to the
8 extent that we did hire let's say a third party firm, it's
9 not clear to me that they -- that the counterparty would
10 have necessarily allowed for a third party to have done an
11 independent code review and on-site forensic diligence
12 session and, you know, potentially a multi-month process in
13 order to be able to verify all of those elements. That's
14 highly, highly atypical in these types of situations from a
15 transaction perspective. But in addition to that, it does -
16 - and we do understand this to be the case -- does create
17 potential security concerns for them. They do operate a
18 business on a day-to-day basis, and the more people that you
19 let under the tent around what those security protocols look
20 like, the more risk that that potentially presents to them
21 as an organization. So what we did do and sought to do is
22 also seek sworn assurances around these elements from
23 executives at the company where we at least would be able to
24 rely on that as an enhanced level relative to even just
25 statements that they're making on calls or Zoom, or even

1 based on documents that they may have received. It's just a
2 heightened standard. And so that was something that was
3 also very, very important from our perspective to be able to
4 get.

5 THE COURT: Just to interrupt you for a second.
6 The ISO and SOC 2 documents that you had described, those
7 are not Binance people telling you things. Those are
8 outside people reviewing what Binance does and telling you
9 that it complies with certain standards, right?

10 THE WITNESS: That is correct, yes. For the SOC 2
11 and the ISO statements, that's correct.

12 THE COURT: And Binance paid those people to do
13 those reviews, but those reviews were provided to you.

14 THE WITNESS: And they were provided to us by
15 Binance. So...

16 THE COURT: Yeah.

17 THE WITNESS: Yeah.

18 THE COURT: But the reviews themselves are by
19 other people certifying that they've looked at it and it
20 complies with whatever the standards are that
21 (indiscernible) described.

22 THE WITNESS: With standards and -- like, I think
23 beyond those, I haven't received the report, but we've been
24 told that they also comply with PCI, DSS standards, which
25 relate to requirements under credit card transfers and

1 what's needed. So I mentioned those two because those are
2 the two reports that we received. But I am --

3 THE COURT: Okay.

4 THE WITNESS: I've at least been told that there
5 are additional standards above and beyond that.

6 THE COURT: Very Good. Sorry to interrupt your
7 questions. I just -- sometimes I have to interrupt or I'll
8 never remember all my own questions at the end. Please
9 proceed.

10 BY MS. DIRESTA:

11 Q Did you have anything else to add, Mr. Tichenor?

12 A I don't believe so on those points. Hopefully I
13 answered your questions.

14 Q Okay. Okay. And then earlier someone was asking how
15 much you guys were going to get. So I believe you confirmed
16 that if you guys make a sale, you would get \$12 million.
17 But if it's the toggle option, you guys get the \$11 million.
18 Is that correct?

19 A That is correct.

20 Q What do you guys get if it's a Chapter 7 liquidation?

21 A I would need to go through. I believe it's still
22 covered under -- I don't know the answer. I would have to
23 go back through our engagement letter.

24 Q Okay. Yesterday the BRG witness confirmed for me that
25 for every \$20 million in recovery, it pretty much only

1 equates to one percent of recovery for the creditors. So
2 with the toggle option, you said we would leave about \$100
3 million. So that equals about five percent recovery lost.
4 Is that correct considering what the BRG value confirmed
5 with the math?

6 A That's correct.

7 Q So yesterday the percentage that was given was as of
8 February 27th, the recovery would be 73 percent if the
9 Alameda loan -- I'm sorry, Alameda clawback does not go
10 through. If the Alameda clawback does go through, then that
11 73 percent gets reduced to 38 percent. So assuming the
12 clawback does not go through with the 73 percent, we would
13 lose five percent with the toggle option, making it about 68
14 percent as of the date of yesterday if we did the toggle
15 option approximately, right?

16 A So based on those numbers, my recollection is it's a
17 five to six percent differential between the two. So
18 between the plan option with Binance relative to a self-
19 liquidation of recoveries.

20 Q Okay. Give me one second.

21 A And to your point yesterday, it's beginning to think of
22 the recoveries associated with Alameda as either succeeding
23 or not succeeding. So it's a parallel shift depending on
24 ultimately what happens.

25 Q Okay. So jumping to my last question. I don't really

1 want to spend a lot of time on, you know, asking you too
2 many questions about the past. But I know that I and
3 several creditors are curious, did you guys entertain bids -
4 - because it seemed like you guys attempted to entertain
5 bids that were heavy cash up front bids versus long-term
6 plans even if they weren't heavy cash upfront. But in say a
7 year or two, in the long term, the creditors would be able
8 to recover like a hundred percent of their assets because
9 the company let's say providing the long-term plan, you
10 know, maybe they're getting, like, 60 percent of our assets
11 now, but then they provide incentives to stay on the
12 platform because they're actually saving the Voyager app
13 versus killing it, they're actually saving VGX versus it
14 dying off. It's saving all of these things. And then they
15 have all these upsides so that in say a year or two, we
16 would have made whole. Did you guys, one, have those kinds
17 of bids, and two, did you seriously entertain them?

18 A We had a range of different types of proposals. We did
19 receive certain proposals including, for example, equity
20 components to them. But I want to be clear, with proposals
21 that also included equity components, it wasn't like in that
22 instance the parties were getting a hundred percent of the
23 equity in that business. Right? And I think that's
24 something that sometimes may be missed.

25 And so the short answer is yes, we did entertain

1 proposals like that. We evaluated them. We evaluated a
2 number of different types and forms of proposals. We had
3 some with earnouts, we had some with up-front cash
4 considerations. We had some with trading credits. You
5 know, every form and flavor.

6 And so one of the things that we did -- and again, in
7 agreement and in consultation also with the UCC and their
8 advisors around this is, you know, sought to evaluate and
9 compare those. And one of the things that doesn't always
10 necessarily come up is as we were evaluating those, we were
11 also factoring in dynamics of counterparty risk and
12 feasibility as well. You know, if you're establishing a new
13 newco, for example and we were to transfer all the assets
14 over there, we wouldn't want to be in a situation where that
15 business wasn't appropriately capitalized, right? And so
16 one of the things relating to that is that, well, people may
17 think I would have an ability to, for example, participate
18 in potential upside of the platform, you know, we also
19 evaluated what does that platform look like, what are the
20 business lines associated with that, do you think that that
21 would be compliant from a regulatory perspective in light of
22 what's going on with the underlying industry. What is their
23 business plan associated with it? We didn't want to do a
24 transaction with a party we didn't think necessarily had
25 fully fleshed out and thought through all of the really

1 critical dynamics of overhead, staffing, employees. There's
2 a lot of factors, right? Do they have an exchange that they
3 operate, do they not?

4 And so we took all of that, we evaluated it. We sought
5 to place value on equity components, for example, in
6 valuating bids. You know, the firm, we have a structure
7 around what that looks like. But these are things that we
8 thought through. They were key considerations. There were
9 very long debates and discussions around it. And ultimately
10 the plan that we put forward was one that was focused on
11 what we thought was a value-maximizing proposal that
12 provided the best outcome for people that also didn't take
13 money out of their pockets either, right? And that's what I
14 was getting at with the capitalization element, is to the
15 extent that let's say we have a billion of crypto, we needed
16 to hold back, I don't know, \$150 million in order to
17 capitalize that entity, that's money that you don't receive
18 today. Right? And you would get in the equity and
19 hopefully that succeeds. But there's always a risk that it
20 doesn't. And so these were all things that we thought long
21 and hard and had very extensive debates with our board
22 about, we had very extensive debates with the advisors
23 about.

24 So to answer your question in a longwinded way, we were
25 not dismissive of anything that came forward.

1 Q Okay. And earlier when you were answering a question
2 regarding backup bids, was I correct in hearing that you
3 said that there weren't any other companies -- so we
4 determined that Binance was the second-highest bid, but they
5 did not want to be considered a backup bidder. But say the
6 third-highest bidder and so on, were they asked to be a
7 backup bidder and they also refused?

8 A That's correct.

9 Q I was trying to understand how you were answering that
10 question.

11 A You are correct. And there were extensive negotiations
12 around these exact points at the auction. This is one why
13 we had an 11-day auction in part because of these exact
14 types of dynamics. But that's correct. There was no party
15 that was willing to be a backup bidder.

16 Q Okay. So you did ask, and they all refused is what
17 you're saying.

18 A Yes, correct. And I want to be clear on the Binance
19 one, there was a contingency that would not have qualified
20 them to be a backup bidder. So you had a backup bidder
21 proposal, but it would require the estate paying an expense
22 associated with that that was not approved under bid order
23 and is highly, highly atypical. And so it was not accepted
24 as a backup bid at that point.

25 Q Yeah. And I guess --

1 A that was the only one that was --

2 Q Okay, now you confused me by saying that's the only one
3 that was available.

4 A Well, to the extent that --

5 Q I thought we just --

6 A So to the extent that the Debtor would have tried to
7 have accepted that backup bid or plan, there would have been
8 additional proceedings relating to trying to pay an expense
9 reimbursement, for example, that was not approved. And as I
10 said, it is highly, highly atypical to that type of a
11 feature. So at that point in time based on the facts and
12 circumstances, we didn't seek to try and move forward on
13 that basis.

14 Q Oh, okay. I think I understand what you're saying.
15 What you're saying is let's just say five, we asked five of
16 the bidders do you want to be a backup bidder. All of them
17 said no except for Binance. Binance said yes, but only
18 contingent upon if you pay us to be a backup bidder. And
19 you guys are like no, we don't want to do that. And so
20 that's why they were not chosen to be a backup bidder. Is
21 that correct, how I understand --

22 A That is a fair characterization, yes.

23 Q Okay.

24 A And the number of parties is a little off, but yes,
25 that's a fair characterization.

1 Q Yeah. I just threw an easy number out there. Okay.
2 I'm just looking at my notes real quick to make sure I got
3 all my questions. I think I do. Okay, yes. Thank you. I'm
4 done.

5 THE COURT: Thank you very much. Is there anybody
6 else on the phone who desires to cross-examine the witness?

7 All right. Did the Committee have questions --

8 MR. JONES: Yes. Seth Jones.

9 THE COURT: I'm sorry, who is that?

10 MR. JONES: Seth Jones. I have a few questions.

11 THE COURT: All right. Go ahead, Mr. Jones.

12 BY MR. JONES:

13 Q So you negotiated a \$12 million contract with Voyager.
14 What value did you expect to bring back to the estate in the
15 bankruptcy process?

16 A I'm sorry, could you repeat that? I wasn't able to
17 hear this voice.

18 Q When you negotiated a \$12 million contract with
19 Voyager, what value did you expect to bring back to the
20 estate in this bankruptcy process?

21 A We negotiated what we viewed was an arms length fee. I
22 know that there were also discussions with the UCC around
23 that. We looked at comparable situations.

24 You know, I think one thing to remember here too,
25 right, is that there's upfront consideration and there's

1 also value in other forms. Right? And so when we think of
2 the value pot, we understand that there is a view around the
3 upfront consideration from the purchase price perspective
4 being, you know, in this case \$20 million. But there's --
5 it's not really a \$20 million purchase. And I think the way
6 that we have always viewed this is that it's a billion-
7 point-zero-two-two -- it's 1.022 billion from a
8 consideration perspective because we have to figure out what
9 to do with the crypto and we have to figure out how to
10 operate the business and we have to figure out how to
11 maximize value. And so we ran a gauntlet of different
12 scenarios and processes and ran everything down in order to
13 try and make sure that we were maximizing value.

14 Because for example, you know, you could see a
15 situation where somebody would say, well, why don't I just
16 do a block trade on the crypto portfolio and run it like a
17 Chapter 7 liquidating trustee would. Well, you know, we had
18 discussions with market makers who actually literally
19 participated in some of the U.S. Marshal auctions relating
20 to liquidations of crypto portfolios that they received in
21 connection with seized assets, for example, like Silk Road.
22 And they gave us views on where the discounts were that they
23 participated in those deals. And so we ran down everything
24 and tried to run down various structures, various proposals.

25 Obviously I think in light of what happened with FTX,

1 obviously things changed and there was a lot that evolved
2 over the course of this case. Would I have, in hindsight
3 looking back in June, expected that in the interim, FTX was
4 the second-largest exchange and an individual would get in
5 front of congress and testify to the nature of the business
6 to collapse? No. But, you know, we sought to maximize
7 value throughout. And again, I think the foregone value in
8 a lot of ways is also what we think is a really important
9 element to the plan. It's been a very key consideration
10 from our perspective.

11 Q (indiscernible) granted permission to start rebalancing
12 the coin from January 10th. One of the professionals I
13 believe was BRG during the first APA disclosure hearing.
14 But they estimated it would cost \$30 million in slippage
15 fees and one month to rebalance the portfolio. And they
16 said they planned on starting in early February. Why has
17 this process not started right away to start breaking down
18 the liquid assets into smaller blocks and not disrupt the
19 markets?

20 A So we have sought to not disrupt the market. We wanted
21 to make sure that we were fully coordinated with the UCC on
22 what the options were going to be for purposes of
23 rebalancing. We engaged with various market makers, we
24 solicited a number of different proposals. We compared
25 those. We have obligations even under the APA relating to

1 (indiscernible) that Binance had negotiated for in
2 connection with some of those transactions.

3 And to be clear, the fees that are being paid from a
4 commission perspective are in our minds likely to be very,
5 very low here. And I say that in the sense that based on
6 the way that we are doing the rebalancing, based on the way
7 that the trades are occurring, you know, they are likely to
8 be in the very, very, very low single digits from a
9 commission --

10 Q So single digits? This slippage is not going to be \$30
11 million?

12 A If we have to pivot to, for example, a toggle plan,
13 they could be more based on the liquidation of the
14 alternative -- or the unsupported coins to the extent they
15 need to be done in block trades. The strategy that the
16 Debtor is pursuing right now is one that we believe would
17 reduce the level of commissions and would optimize around
18 the outcome to try to limit any movements that the
19 transactions would ultimately have on the market itself.

20 Q So is that inaccurate, the \$30 million?

21 A Excuse me?

22 Q Is it -- was the number -- is the \$30 million
23 inaccurate?

24 A So I think the \$30 million was initially for and may
25 have been a bit of a misrepresentation. I think that that

1 was meant to not be necessarily commissions. It was meant
2 to include other elements --

3 Q Slippage fees.

4 A Excuse me?

5 Q I said slippage fees.

6 A Yeah, that's right. And slippage is different than
7 commissions though.

8 Q Slippage fee for illiquid coin. (indiscernible). No,
9 it's not including commission. (indiscernible) my slippage
10 fees (indiscernible) illiquid assets.

11 A Yes. And slippage though is different than commission,
12 right? And so when I talk --

13 Q Yeah, absolutely.

14 A Yeah. And so when -- you know, I believe the numbers
15 that were reported yesterday had been based on just the
16 market prices in all crypto to the extent that effectively
17 let's say the rebalancing has already occurred, right? It
18 hasn't fully completed yet, but there's still --

19 Q Yeah. I'm not talking about the (indiscernible). I'm
20 talking about how much will it cost in slippage fees. Is it
21 \$30 million?

22 A Well, we don't know what the slippage is ultimately
23 going to be. It's a bit of a -- the one difficulty with
24 slippage is that it's kind of a counterfactual, right, in
25 the sense that there's no way to measure the impact of just

1 slippage in the sales of any individual token relative to
2 broader price movements in the underlying market. And so
3 what we try to do is by doing the transactions over a
4 prolonged period of time and being very careful and managed
5 in how much individual trades are occurring in given day and
6 any given token, in any given market at any given exchange
7 is to make sure that by doing it over such a long period,
8 our view is that it is likely to inherently limit any
9 ability of individual trades to likely have an impact. But
10 it's an unknown. It's --

11 Q So one month was inaccurate too. Are you saying?

12 A No, I'm not saying that it's an inaccurate statement.
13 I am saying that it's an estimate, and there continue to be
14 estimates around figures relating to unknowns based on where
15 the market is moving. Just like the recovery is an
16 estimate. We do not know ultimately what the value would be
17 of the portfolio at the time that the rebalancing finishes.
18 The percentage recoveries are still going to move. They're
19 going to move based on --

20 Q Absolutely.

21 A -- (indiscernible) that we know happened last night.

22 Q Absolutely. All right. You talk about \$135 million in
23 the 35 unsupported coins. Is that number before or after
24 the 445 million holdback in FTX and the \$135 million
25 winddown trust that has to be liquidated into U.S. dollars,

1 which is, what \$580 million, that those 35 coins will be
2 paid out in pro rata, the difference.

3 A I'm sorry, do you mind repeating that?

4 Q (indiscernible).

5 A I just couldn't hear you. Do you mind repeating that?

6 Q You talked about the 135 million in the 35 unsupported
7 coins. Is that number before or after you have to liquidate
8 the \$445 million FTX holdback and the \$135 million winddown
9 that has to be liquidated to U.S. dollars?

10 A Yeah, I think I understand your question. I don't know
11 the answer to that. I would have to check the exact
12 figures. I understand the nature of your question. I don't
13 know the specific answer.

14 Q So it could be a lot less to liquidate you're saying
15 (indiscernible).

16 A I don't -- look, I don't believe so, but I don't know
17 the answer. I would have to check.

18 Q You talked about maximizing value. Why have the
19 partners been forced into a high stakes casino in this
20 volatile market instead of giving their assets back
21 immediately? Waiting nine months. Creditors have lost the
22 right to appreciation of a specific asset they originally
23 invested in.

24 A So I think --

25 Q I believe it was a lie (indiscernible) was willing to

1 help you out with that.

2 A Sorry, are you talking about in July or at the FTX
3 proposal?

4 Q Yeah, or any time. Yeah.

5 A Well, I think in hindsight we're pretty happy that we
6 didn't go forward with FTX in July.

7 Q Well, absolutely. But that's not decision-making
8 correctly, obviously.

9 A At the time --

10 Q You want to talk about hindsight, what about the
11 Binance deal? Are we going to be saying the same thing in
12 the future?

13 MR. SLADE: Your Honor, object. We're getting
14 speeches, not questions.

15 THE COURT: I'm sorry, Mr. Jones. I'm not sure
16 what your question is.

17 MR. JONES: He wants to talk about hindsight
18 saying thank god we didn't (indiscernible) the FTX deal or
19 didn't (indiscernible). But now he wants to talk about
20 Binance is okay. Are we going to be saying the same thing
21 in the future?

22 THE COURT: Well, okay. I can sense from your
23 tone and from your question that you have your own point of
24 view of that situation. But remember, please, what we're
25 doing right now is we're taking evidence. We're asking

1 questions of the witness about the proposals that are in
2 front of us. So let's try to focus on that. Okay? Do you
3 have another question for this witness?

4 MR. JONES: No, that's it for now. I appreciate
5 it, Judge. Thank you.

6 MS. TREVINO: I have a question.

7 THE COURT: All right. Who is this? I'm sorry?

8 MS. TREVINO: My name is Lisa Trevino. I am pro
9 se. I have a few questions, please.

10 THE COURT: Yes, please. Go ahead.

11 BY MS. TREVINO:

12 Q Mr. Tichenor, I just have a few questions for you,
13 please. And then maybe one follow-up depending on your
14 answer.

15 What happens if the part two of the claims that we
16 received from Stretto, the email, the claims email, what
17 happens if the part two of the claims amount are found to be
18 inaccurate in any way? How would those affect recovery
19 rates?

20 A I don't know exactly what the part two claims are.

21 Q Okay. So just to clarify, the Judge, before this
22 hearing that started yesterday, the last hearing, he
23 discussed that specifically. I asked the Judge this and he
24 said part one is for voting and part two is --

25 THE COURT: Oh, I think I know what you mean. You

1 mean the objections to the substance of the claims. Yeah.
2 The percentage results are based on the Debtor's estimates
3 of where that will turn out. If the allowed claims are
4 higher than the Debtor estimates, then the recovery
5 percentages will go down. But that will be true
6 proportionally no matter what we do. Right? Because it
7 will just be -- the allowed claims will be the same as they
8 would be in Chapter 7 as they would be under a toggle plan,
9 as they would be under a Binance proposal.

10 MS. TREVINO: Okay. So I guess the follow-up
11 question to that, Your Honor, would be are there any other
12 situations or any other than what has been discussed over
13 the past two days that would affect the recovery rates that
14 we have not heard?

15 BY MS. TREVINO:

16 A That's a good question. There are factors potentially
17 from timing perspectives. I mean, it's always very
18 difficult to know exactly what's going to happen in the
19 future. I think we tried to outline the key elements. And
20 I think probably the biggest one is just volatility in
21 cryptocurrency prices. Effectively the estate
22 (indiscernible) a very large pool of cryptocurrency. We are
23 seeking to distribute that obviously in kind and do the
24 rebalancing trades in connection with that. But it creates
25 volatility in recoveries and it's a large part of why, for

1 example, we are aware of the mid-20 percent numbers that
2 are being quoted relative to where we are now in light of --
3 you know, to the extent that the Alameda claims end up being
4 valid. And so I think that's probably the biggest one. But
5 in truth, I don't entirely know. But in some instances, I
6 would say probably time is going to be the biggest one. So,
7 for example, to the extent that we continue to perform due
8 diligence moving forward, end up selecting to move to a
9 toggle, and it's several weeks from now. And then if
10 operationally things weren't in place to be able to properly
11 execute it, it may result in a delay. But that to me is
12 probably the biggest one if I were to think of
13 (indiscernible) outside the crypto portfolio value. But,
14 look, it's tough to know. It's an unknown, right?

15 Q Okay. My second question would go to Mr. Tichenor.
16 What is your opinion specifically, like we asked the other
17 witnesses yesterday, your own opinion of the 445 million
18 clawback (indiscernible), do you feel that this is a right
19 and just situation?

20 MR. SLADE: Your Honor, I would object.

21 THE COURT: Yeah. First of all, that's a legal
22 question. Second, I'm not sure that it's in anybody's
23 interest to ask the Debtors officially in sworn testimony
24 whether they think their litigation adversary is going to
25 win or lose. They probably will want to continue to put

1 forward the strongest defense that they can without being
2 put to that kind of testimony under oath any more than
3 Alameda would want to testify as to what it thinks its risks
4 are. So I think I'll have to sustain the objection to that
5 question. I hope you understand why.

6 MS. TREVINO: I do. Thank you very much, Your
7 Honor.

8 THE COURT: All right.

9 MS. TREVINO: That's all for now from me.

10 MS. RYAN: Your Honor, I may. This is Ms. Ryan
11 from the State of Texas. I have one question that I just
12 thought of.

13 THE COURT: I think you -- I think you had your
14 chance. But does anybody object to Ms. Ryan asking another
15 question?

16 MR. SLADE: If it's just one, it's okay, Your
17 Honor.

18 THE COURT: Okay. You've got permission to do
19 just one, so choose it carefully.

20 MS. RYAN: Thank you. I will.

21 BY MS. RYAN:

22 Q Mr. Tichenor, in doing due diligence into Binance, did
23 you come across any company agreement between Binance.US and
24 Binance.com that could affect Binance.US's performance?

25 A And by performance -- so I just want to make sure I

1 understand the question. We reviewed the agreements between
2 them that we were of the commercial agreements in nature.
3 You know, I can always think of hypotheticals that could
4 impact things. But we did review the nature of those
5 agreements and the ability, for example, of -- and we asked
6 this question very point blank, the ability of Binance.US to
7 continue to operate as a standalone business to the extent
8 that Binance.com didn't exist.

9 Q Thank you. That was all.

10 THE COURT: Okay. Anybody else on the phone who
11 has questions for Mr. Tichenor? All right.

12 Does the Committee counsel have questions?

13 MR. EVANS: Yes, Your Honor. This is Joseph Evans
14 from McDermott Emery on behalf of the committee of unsecured
15 creditors.

16 BY MR. EVANS:

17 Q Good afternoon, Mr. Tichenor.

18 A Good afternoon.

19 Q There's been a lot of discussion today about whether
20 the Binance deal closes. Do you recall that?

21 A I do.

22 Q And you referred to something called a fiduciary out.

23 A I hope I did.

24 Q What's a fiduciary out?

25 A So a fiduciary out is that as structure of the APA, we

1 have an agreement to move forward with Binance.US to
2 consummate a transaction. A fiduciary out allows for the
3 Debtor, to the extent that there is a proposal, even in the
4 interim prior to any closing, to evaluate and potentially
5 move forward with that party to the extent that that
6 transaction is viewed as being higher or otherwise better
7 than the existing Binance.US deal.

8 So up until the point where the transaction closes, you
9 could theoretically still move forward with a different
10 alternative?

11 Q Suppose there wasn't another alternative. But suppose
12 you found out something bad about Binance that made the
13 Debtors uncomfortable with the deal. Is there a method by
14 which the Debtors could not close the deal?

15 A We would exercise the fiduciary out and pivot to the
16 self-liquidating toggle at that point because on that basis,
17 the Debtor would argue that on a risk-adjusted basis, that
18 transaction would be higher or otherwise better than the
19 Binance.US transaction.

20 Q Only if whatever was found out about Binance rose to
21 the level that the professionals and the Debtors believed it
22 was in their fiduciary capacity to not go forward with the
23 deal. Is that right?

24 A I believe we have quite a bit of flexibility around
25 ultimately what that would look like and the business

1 judgement of the Debtor to make that kind of determination.

2 Q Okay. And are you familiar with the amended APA?

3 A I am.

4 Q Okay. You don't recall what 8.1(g) says I'm sure.

5 A I don't recall specifically 81.(g).

6 Q Do you happen to have it in front of you? I have a
7 copy here.

8 A Is it Exhibit 9?

9 MR. EVANS: Your Honor, to refresh the witness's
10 recollection, I would like a copy of the amended APA. It's
11 Document Number 835.

12 THE COURT: Go right ahead.

13 MR. SLADE: It's Exhibit 9.

14 BY MR. EVANS:

15 A Which specific provision?

16 Q This is the second blue tab. It is 8.1(g).

17 A 8.1(g). Yeah.

18 Q So if you turn to the page right before it, which is
19 Page 63 of the contract. Article 8 is labeled Termination.
20 Do you see that?

21 A Yes.

22 Q Okay. And it says this agreement may be terminated
23 only in accordance with this Section 8.1 Do you see that?

24 A I do.

25 Q Turn to the next page, subsection G. It states, "By

1 written notice from seller to purchaser, which may be
2 revocable in the sole discretion of seller by written notice
3 of seller to purchaser within five business days of seller
4 or the board of directors or similar governing body of
5 seller determine in good faith and after consultation with
6 legal and other advisors that proceeding with the
7 transactions or failing to terminate this agreement will be
8 inconsistent with its or such persons or body's fiduciary
9 duties. Do you see that?

10 A I do.

11 Q And is that the fiduciary out that you were
12 referencing?

13 A That is.

14 Q Okay. You can put it down for now. There was a lot of
15 discussion today about the diligence that Moelis and other
16 professionals performed on Binance.US. Isn't that right?

17 A There has been a little bit, yeah.

18 Q And there was also some discussions about
19 representations made by Binance.US to you and the other
20 professionals. Isn't that right?

21 A That's correct.

22 Q And you did other due diligence, but in part you relied
23 on some of those representations, didn't you?

24 A Absolutely.

25 Q Okay. One of those representations was that Binance.US

1 holds the digital assets deposited by its customers on
2 Binance.US's platform solely in a custodial capacity and on
3 a one-to-one reserve basis. Do you remember that?

4 A I do.

5 Q What's a one-to-one reserve basis?

6 A So a one-to-one reserve basis is that to the extent
7 that have one bitcoin due to a customer, they had one
8 bitcoin that was held in custody on the platform. So
9 effectively you could never have a quote, unquote, run on
10 the bank because effectively all that would happen is people
11 would just withdraw the crypto. It would be very similar to
12 if a bank only had cash and the parties were seeking to
13 withdraw all the cash.

14 Q And so if Binance is stating to you that crypto was not
15 held on the one-to-one reserve basis, would that materially
16 change -- if it was false, would that materially change your
17 opinion on whether this transaction should go forward?

18 A To the extent it was lower, absolutely. If it were
19 higher and for some reason they chose to overcapitalize
20 customers' accounts, I'd feel pretty good about that. But
21 to the extent that it was lower, absolutely. It would
22 materially impact our view.

23 Q And there were some discussions yesterday about, well,
24 how is Binance.US holding crypto any different than Voyager
25 did. If you know, did Voyager hold crypto on a one-to-one

1 reserve basis?

2 A Not to my knowledge. Or they rehypothecated it and
3 that's why we're in the situation that we're in today.

4 Q Let's talk about that word, rehypothecate, for a
5 second. What's rehypothecate?

6 A So rehypothecation is the ability to take collateral
7 that a party may have posted on a platform. It's very
8 common in the traditional securities sense where if you have
9 a margin account at an equity trading platform,
10 rehypothecation is the ability to use those funds and to be
11 able to lend them out to somebody that is seeking to borrow
12 them.

13 So in the sense of Voyager, as people think about their
14 crypto, it's why all of the crypto is property of the
15 estate, is so that they can rehypothecate it and lend it to
16 other parties.

17 Q And it's your understanding based on representations
18 made to you on diligence you performed that Binance.US does
19 not rehypothecate customer crypto. Isn't that right?

20 A That's correct.

21 Q And just to be clear, that means Binance.US does not
22 lend customer crypto to anyone.

23 A That is my understanding.

24 Q No lending, no staking, nothing. Right?

25 A So customers I understand can elect to stake through

1 the Binance platform under their terms of service subject to
2 their staking provisions. But from the lending perspective,
3 to be clear, yes, my understanding is they expressly
4 prohibit that.

5 Q Okay. There was some discussion today and yesterday
6 about BAM Trading Service Inc., DBA Binance.US, the Delaware
7 Corp., versus what's known as Binance Global. Do you
8 remember that?

9 A I do.

10 Q the purchaser is the U.S. entity, BAM Trading Services.
11 Isn't that right?

12 A That's correct.

13 Q When you were evaluating the ability to close the
14 transaction, were you evaluating the finances of BAM Trading
15 Services Inc, or were you evaluating the finances of the
16 overall Binance?

17 A We were evaluating the finances of BAM Trading Services
18 Inc., which is a standalone business as we understand it
19 separate and apart and away from Binance Global, which is a
20 separate company from our understanding.

21 Q When you reviewed the audited financial statements and
22 the unaudited financial statements of BAM Trading Services
23 Inc., those were BAM Trading Services Inc. only, not --

24 A That's correct.

25 Q And there was some discussion about the corporate

1 structure. Is Binance global the sole shareholder of BAM
2 Trading Services Inc.?

3 A No. And it is opposite of representations that have
4 been made to us based on our understanding of the
5 organization chart and ownership interests of the business.

6 Q Let me just make sure -- because the representations I
7 didn't get. So what you're saying is Binance Global is not
8 the sole shareholder of BAM Trading Service Inc., right?

9 A Correct.

10 Q Okay. But in determining whether BAM Trading Services
11 Inc. had the financial capability to close, you didn't just
12 take their word for it, right? You looked at information?

13 A We did. We requested a proof of funds, which is a bank
14 statement that they provided from their bank. And we even
15 reviewed the nature of the bank to make sure that we felt
16 comfortable with that.

17 Q So you actually looked at a bank account statement that
18 said we have enough cash to close?

19 A We did.

20 Q Who is Changpeng Zhao?

21 A He is the founder of Binance.com and he is the UBO of
22 both Binance Global as well as Binance.US.

23 Q Okay. There were some questions about the ability of
24 Binance Global to make decisions concerning the customer
25 assets held at BAM Trading Services Inc., Binance.US. Do

1 you recall those questions?

2 A I do.

3 Q There was representation made to you, was there not,
4 that only employees of Binance.US., not Binance Global, are
5 able to move or withdraw customer crypto from Binance.US's
6 platform. Do you remember that representation?

7 A I do.

8 Q Now, when they made that representation, you also asked
9 some follow-up questions about this representation, didn't
10 you?

11 A Of course we did.

12 Q And it was over the course of multiple sessions, right?

13 A Many, many sessions.

14 Q And did you ask, for example, does CZ have the power to
15 take customer crypto out of BAM Trading Services Inc?

16 A We did.

17 Q And what was the response?

18 A No.

19 Q Separate from the responses, you've viewed policies,
20 procedures, and protocols? Have you asked questions about
21 how the information security works?

22 A We did.

23 Q Did anything in your view call into question whether CZ
24 had the power to take customer crypto from Binance.US and
25 move it to Binance Global?

1 A We were always concerned about the ability of somebody
2 that was associated with Binance Global to be able to remove
3 crypto out or assets from Binance.US.. And it came up in
4 multiple discussions.

5 Q So you were concerned as it was a topic of diligence,
6 correct?

7 A Yes.

8 Q When you do all this diligence and you did these
9 interviews and you reviewed the policies, did you see
10 anything that indicated to you that CZ had the power to take
11 customer crypto out of BAM Trading Services Inc. and move it
12 over to Binance Global?

13 A No. And if anything, what we understand to be the case
14 is that no individual has an ability to move -- no specific
15 individual can move crypto out.

16 Q Okay. There was a couple of questions -- and let me
17 just ask the same question for Binance Global generally
18 based on your review of the policies and procedures, your
19 interviews. Do you have any reason to believe that Binance
20 Global can direct Binance.US to take customer crypto out of
21 Binance.US and send it to Binance Global?

22 A Based on the representations that were made to us, I
23 have no basis to believe that's the case.

24 Q Earlier today, the SEC raised some questions about
25 security protocols and how you know stuff like what you just

1 said. Do you recall that?

2 A I do.

3 Q Okay. So along with the policies and procedures, you
4 also received two security reports from independent third
5 parties. Isn't that right?

6 A That's correct.

7 Q And I just want to clarify the record because there was
8 a question that was asked to you by the SEC, and it was --
9 there was a bunch of questions. But one of the things you
10 said was when you sought to get representations, that was
11 the work that we did. That wasn't all the work that you
12 guys did, right?

13 A No, that's correct. We did more work than just seeking
14 to get representations.

15 Q Okay. Like, for example, you reviewed the security
16 report from December of 2022, isn't that right?

17 A I did.

18 Q And you reviewed another security report from June 1st,
19 2022.

20 A That's correct.

21 Q and those reports were all issued by independent third
22 parties, not Binance. Isn't that right?

23 A That's correct.

24 Q On February 16th, 2023, there was an article issued by
25 Reuters about Binance concerning an entity called Merit

1 Peak. Do you remember that media report?

2 A I do.

3 Q And in that media report, there was an allegation that
4 \$400 million was withdrawn from a bank account at Binance.US
5 to Merit Peak. Do you remember that?

6 A I do.

7 Q When you saw that article, what did you do?

8 A We immediately reached out to Binance.US to ask them
9 about the nature of the article, to immediately schedule
10 diligence discussions. And I believe the next day we were
11 beginning to have conversations with them about it.

12 Q And it wasn't just Moelis, right?

13 A Not just Moelis, yeah.

14 Q It was Moelis and a variety of other professionals that
15 were asking. Each of them had different questions, right?

16 A That's correct, yeah. I mean, I know for a fact on
17 that specific item, it did involve Moelis, it involved
18 Kirkland, McDermott, FTI, BRG. All of the advisors.

19 Q In connection with I'll call it the Merit Peak
20 diligence, there were a number of meetings with Binance
21 executives, wasn't there?

22 A There have been, yes.

23 Q And document requests?

24 A Yes.

25 Q And ultimately there was an in-person meeting the day

1 before the first hearing where two Binance executives went
2 through all the Merit Peak information. Isn't that right?

3 A That's my understanding. I wasn't in attendance at the
4 meeting.

5 Q You didn't attend, but people on your team did attend.

6 A Correct. There were individuals from Moelis who
7 attended, yes.

8 Q And in that meeting based on what you know from your
9 team, transaction data was shown to us.

10 A That's my understanding, yes.

11 Q And there was analysis done of deposits versus
12 withdrawals. Isn't that right?

13 A That's my understanding, yes.

14 Q And there were representations by Binance that
15 everything that they showed us was accurate. Is that right?

16 A That would be an important one, yes.

17 Q Okay. And there were three critical representations in
18 my view, but also you have to say. One, Merit Peak --

19 THE COURT: Counsel, there haven't been any
20 objections, but I think just the form of that question
21 without going further I am going to have an objection to.

22 MR. EVANS: Okay. I'll ask this -- withdrawn.
23 Sorry, Your Honor.

24 BY MR. EVANS:

25 Q Did Binance represent that Merit Peak did not withdraw

1 customer fiat or crypto?

2 A They did.

3 Q Did Binance represent that Merit Peak nor any other
4 market maker had the ability to withdraw customer fiat or
5 crypto from the Binance.US platform?

6 A They did.

7 Q Did Binance represent that Merit Peak no longer
8 conducts any activity at Binance.US?

9 A They did.

10 Q There were some questions raised about FTX, the FTX
11 deal versus Binance. Do you recall those?

12 A I do.

13 Q When the Binance deal was getting negotiated, it was
14 substantially different than what it is now, isn't it?

15 A It evolved over many, many months. Yes.

16 Q Okay. And in fact at first the deal was all of the
17 customer crypto would go over to Binance.US and they would
18 hold it until the customer was on board with Binance.US and
19 then get released to them. Isn't that right?

20 A That's correct.

21 Q Okay. And the committee and other professionals
22 objected and pushed for a different way to distribute the
23 assets. Isn't that right?

24 A That's my recollection, yes.

25 Q And so the plan now is that once customers get

1 onboarded with Binance.US, crypto gets released on a weekly
2 basis. Isn't that right?

3 A That's correct. So my understanding is that a customer
4 would have to be a customer of Binance.US They would have
5 signed up. They would have done their KYC. At that point
6 in time, on a weekly basis crypto would be transferred in
7 bulk transactions. And part of that is to also minimize
8 friction costs. We're aware of things like gas fees, for
9 example, that could occur on a one-off basis. And so upon
10 that customer signing up, they are allocated crypto on a
11 weekly batch, would be transferred over, and then
12 subsequently deposited into their account.

13 Q Why is that safer for customers than the original deal
14 that was proposed?

15 A It's safer for the customers that choose not to migrate
16 to Binance.US, for example, or who have yet to establish
17 accounts. And so in the context of let's say a bankruptcy
18 to the extent there was fraud or theft of funds, for
19 example, and there were issues that we were unaware of or
20 unable to diligence, in that instance, the customers would
21 have signed up for the account. We probably have the
22 ability to monitor or we planned to monitor the transactions
23 as they were coming. But it limits the Debtor as the estate
24 and their exposure to a counterparty until the point where
25 the sale should have occurred and the transfer should have

1 occurred and they are a customer of that entity.

2 Q Is that because customers want to withdraw their crypto
3 from Binance as quickly as possible, that customer's crypto
4 is only exposed to Binance for a short period of time?

5 A In part, yes. Yeah.

6 Q You became aware of the letter issued by a couple of
7 congresspeople in the United States Senate.

8 A Three senators, yes.

9 Q Three senators. That's right. When did you become
10 aware of that?

11 A Late last night, around 10:00.

12 Q And you've read it I presume?

13 A I have.

14 Q Okay. Would you describe the diligence on this senate
15 letter as ongoing?

16 A I would.

17 Q Did you talk to Binance about the senator letter?

18 A We spoke this morning with them. Not just Moelis, but
19 all of the professionals in the case.

20 THE COURT: Does anyone want to put that letter in
21 evidence so that we have some context about what all this
22 testimony is about?

23 MR. SLADE: Certainly, Your Honor. We would offer
24 the letter as Exhibit 25.

25 MR. EVANS: Your Honor, I have a hard copy for you

1 if you're interested.

2 MR. SLADE: Obviously, Your Honor, not for the
3 truth of any of the matters asserted.

4 THE COURT: Obviously not for the truth of what's
5 asserted, but just to put in context what the testimony has
6 been about.

7 MR. BRUH: Your Honor, Mark Bruh for the United
8 States Trustee. Could we just get some clarification? Is
9 this the Committee's witness or is this the Debtor's
10 witness? Because the line of questioning seems a bit
11 leading to us.

12 THE COURT: It's the Debtor's witness.

13 MR. BRUH: Okay.

14 THE COURT: If you have objections to questions,
15 just speak up. Can I see this senate letter that we've
16 introduced?

17 MR. EVANS: Yes, Your Honor. May I approach?

18 THE COURT: Yes.

19 BY MR. EVANS:

20 Q Based on your conversations with Binance this morning,
21 is your understanding that they're willing to provide more
22 diligence concerning this letter?

23 A They have represented that they are willing to continue
24 to engage in diligence relating to allegations in the
25 letter.

1 Q Okay. And if they don't have responses that are in
2 your view sufficient concerning these allegations, would
3 that be one of the things that may factor into your decision
4 to say, well, maybe we should execute our fiduciary out?

5 A There were a number of documents that would ultimately
6 determine our ability -- or in the determination to exercise
7 the fiduciary out. There are very serious allegations that
8 are being made in that letter that obviously caused concern
9 from our perspectives that would need to be addressed. And
10 to the extent that we don't feel like they are sufficiently
11 addressed, it would be one of many factors that would go
12 into a determination to assess on a risk-adjusted basis
13 whether or not that is a transaction that is worth pursuing
14 and moving forward with or exercising the toggle, which the
15 plan allows for.

16 Q Along with the United States Senate letter, there was
17 another development this morning, wasn't there?

18 A There was.

19 Q What was that?

20 A CZ, Changpeng Zhao, who is the UBO of both Binance.US
21 as well as Binance Global, sent a tweet this morning as a
22 reply to another tweet relating to the Voyager Binance deal
23 that seemed to have referenced the SEC. It appeared based
24 on that tweet that they may have been pulling out of the
25 deal. And obviously that is extremely concerning.

1 Q And the tweet said maybe we should pull out. Isn't
2 that right?

3 A That's -- I didn't remember the exact words, but that's
4 my recollection, yes.

5 Q And it was a link to an article about the SEC's
6 argument yesterday at this hearing. Isn't that right?

7 A I believe so. There was a lot happening this morning,
8 and I've been on the stand for quite a while today. So yes,
9 that's my recollection.

10 Q And then there was a call this morning, wasn't there?

11 A Yes. There were several calls this morning.

12 Q And during that call, a text message was read to you,
13 wasn't it?

14 A There was a text message that was read to me by a
15 Binance.US representative around their interests and still
16 moving forward with the transaction. We also had another
17 call with the Binance CEO directly this morning in advance
18 of the hearing relating to the same tweets and making sure
19 that we have assurances from him as well prior to walking
20 into the courtroom today around that interest.

21 Q The text message that was read during the call was from
22 Binance.US's CEO, Brian Shroder, wasn't it?

23 A That's correct.

24 Q And the text message said, "We are not going anywhere.
25 Binance.US is committed to completing this deal." Is that

1 correct?

2 A That's my recollection, yes. And that's consistent
3 with the statements that he then subsequently made to us
4 directly on another conversation involving all of the
5 professionals.

6 Q So there was a text message, then there was a phone
7 call. And during the phone call, Brian said what?

8 A So there were two things. So we had a conversation
9 with individuals at -- an individual, excuse me, at
10 Binance.US who had in the first instance read a -- I think
11 it was either a Slack message or a text message from the
12 CEO. We then subsequently had a conversation directly with
13 the CEO, Brian Schroder, given the fact that we wanted to
14 speak directly about it versus hearsay from one of his
15 employees.

16 Q And when you spoke to Brian Schroder, did he say the
17 same thing, that we are not going anywhere, Binance.US is
18 committed to completing this deal?

19 A He did.

20 Q And was there a request for a sworn statement or
21 appearance or someone from Binance to say something about
22 this statement?

23 A My recollection is yes, there was a lot of discussion
24 this morning, yes.

25 Q Right before this hearing, there was another tweet,

1 wasn't there?

2 A That's my understanding. I was about to get on the
3 stand when it came out.

4 Q Based on your understanding, if you know. You might
5 now know. But if you know. CZ tweets, "We are still in
6 support of the deal and helping returning funds to users as
7 quickly as possible if allowed to do so."

8 A That's my understanding of the tweet.

9 Q So these representations made to you by Binance.US in
10 connection with one-to-one reserve basis asset segregation,
11 the inability of assets to be -- customer assets be moved
12 off the Binance.US platform at the direction of others,
13 statements like they want to go forward with the deal,
14 notwithstanding the CZ tweet. In part you're relying on
15 those in coming to your recommendations about this plan,
16 aren't you?

17 A Those are statements that are important for us for
18 recommending moving forward with the plan. But I do want to
19 be clear as I said at the beginning of my testimony, there
20 is still outstanding diligence. I mean, to be very clear,
21 we would not say that we are in a position to necessarily
22 until we would feel comfortable around the nature of all the
23 diligence and the additional allegations. Are those facts
24 helpful? Of course they are. And the representations that
25 were made to us by them were critical and even signing an

1 ADA with them in the first instance. So they will be
2 critical factors to the extent that we do choose to move
3 forward with Binance. And again, there is still work to be
4 done. And that decision will not be made for several weeks
5 and would not be made just by Moelis, to be clear.

6 Q Is it fair to say that you still have questions that
7 need answers until you're comfortable supporting --

8 A Absolutely. That said, the plan provides for these
9 options and the plan provides for options, which we think is
10 critically important. And our understanding that it has the
11 resounding support of creditors both on the voting as well
12 as the number of individuals that we understand who have
13 already pre-emptively signed up for Binance.US, and we're
14 going to try and get their distributions, which we view as
15 kind of a quasi vote of support, but...

16 Q Along with the representations made to you either
17 orally, in writing, or during meetings, there are also
18 certain representations that are built directly into the
19 asset purchase agreement, aren't there?

20 A There are.

21 Q Okay. And deciding and evaluating whether the asset
22 purchase agreement is a good idea or a bad idea, those
23 representations are important to you, aren't they?

24 A They are important. And I would say during the
25 negotiation and discussions with Binance around the APA, we

1 requested and required that there were additional
2 representations that are uncommon in the context of normal
3 APAs around the nature of the operations and their business,
4 that these are not things that people normally rep to in
5 APAs, but were critically important for us during those
6 discussions.

7 Q So I have a pretty basic question. You have a lot of
8 questions for Binance, still need answers. So do some other
9 professionals. Why do you support the plan with all these
10 ambiguities?

11 A So I support the plan with the ambiguities because it
12 provides us optionality and a path to potentially maximizing
13 value for creditors. We view this as providing two options
14 at this point in time. There's plan A which would be an
15 ability to continue to move forward with the Binance.US
16 transaction at a future date and time based on additional
17 work that still needs to be done. And as we said, the
18 Debtor is not in a position still to be able to close even
19 if it wanted to tomorrow. There's still rebalancing trades
20 that need to occur over a multi-week period. Like,
21 logistically it just will not happen for multiple weeks. So
22 it provides for that option, which we believe provides for
23 potentially higher recoveries, and it also provides for a
24 self-liquidating toggle, which, while a lower recover is
25 obviously an option that the Debtor could control and

1 exercise on its own. So it's the ability to have an
2 embedded backup plan in connection with the highest and best
3 offer with an embedded backup plan which is the basis for us
4 feeling comfortable to move forward.

5 Q Let's talk really, really quickly about benefits to
6 customers. You said that the Binance deal gives about \$100
7 million more value than the toggle. Isn't that right?
8 Something like that?

9 A That's correct, yeah.

10 Q What are those -- where does that increase come from?

11 THE COURT: We've done this two or three times
12 already. Are you about -- are you trying to elicit some
13 error in the prior testimony?

14 MR. EVANS: No. I'll do it a different way then.

15 BY MR. EVANS:

16 Q You say in your declaration that the sales transaction
17 provides the highest value currently available under the
18 circumstances to the Debtor's creditors.

19 A I believe that's what my declaration says, yes.

20 Q Okay. Based on the numbers, do you still believe that
21 today?

22 A So I believe that based on the numbers, it would provide
23 the highest path. But I would say that absent clearing
24 sufficient diligence to feel comfortable moving forward with
25 that counterparty, that's what we think of as a threshold

1 matter.

2 MR. EVANS: I have nothing further.

3 THE COURT: Okay. The United States Trustee?

4 MR. MORRISSEY: Yes, Your Honor.

5 THE COURT: Actually, let's just take five
6 minutes. Okay?

7 MR. SLADE: I'm sorry. You guys already
8 questioned the witness.

9 MR. MORRISSEY: Your Honor, I stand for two
10 things. One is I want, without objection of course, the
11 opportunity to ask one question, plus perhaps a couple of
12 follow ups, of the witness. And based on something the
13 witness just said a few minutes ago. And also, I had a
14 question, Your Honor, about the declaration that you asked
15 for just after the break.

16 THE COURT: You have a question for me about the
17 declaration I asked for?

18 MR. MORRISSEY: Well, obviously with inviting
19 comments from others as well. What I wanted to do --

20 THE COURT: During our break, why don't you talk
21 to the Debtor's counsel about the questions you want to ask
22 and see if they object. Because you have already had a
23 chance at the witness. Okay?

24 MR. MORRISSEY: Thank you, Your Honor.

25 (Recess)

1 THE COURT: Please be seated. I think the
2 official court rule is that I'm not supposed to have this
3 coffee in the courtroom. So you are ordered not to rat me
4 out.

5 MR. SLADE: Your Honor, I did give Mr. Morrissey
6 at least my permission, if he has yours, to ask his one
7 question.

8 THE COURT: Go ahead, Mr. Morrissey.

9 MR. MORRISSEY: Thank you, Your Honor.

10 BY MR. MORRISSEY:

11 Q Good afternoon, Mr. Tichenor. Richard Morrissey for
12 the U.S. Trustee. As I said before the break, I just have
13 one question for you. You had an exchange with counsel for
14 the committee a little while ago about the back and forth
15 with social media messages about people at Binance
16 threatening to back out and saying no, we're not backing
17 out. Do you recall that?

18 A I do.

19 Q Is it your understanding that Binance Global, or CZ
20 himself, either has the power to decide the fate of this
21 deal at all?

22 A That's a great question. It's one that we asked this
23 morning. I don't think we've actually come to a full
24 conclusion on that at this point in time. Where is the
25 chairman of that entity, I don't know. But I imagine that

1 statements along those lines -- I don't know actually is the
2 answer.

3 Q Thank you.

4 MR. MORRISSEY: Your Honor, that's my only
5 question for the witness.

6 THE COURT: Okay.

7 MR. MORRISSEY: I didn't know if you wanted to
8 take my request or recommendation for the declaration that
9 Your Honor discussed just after the previous break.

10 THE COURT: What is your suggestion?

11 MR. MORRISSEY: Your Honor, as you will recall,
12 you gave a list of statements that should appear in the
13 declaration. And I have a request or recommendation that
14 one be added to it. I discussed it with Mr. Slade.

15 THE COURT: Is the Binance counsel here?

16 MR. SLADE: They are not, Your Honor. I explained
17 to Mr. Morrissey that what they had asked their client for
18 authority to make public was in the existing document that
19 was already a sworn statement. So I'm not sure whether
20 adding it -- what happens.

21 THE COURT: does the existing document cover the
22 five points that I mentioned?

23 MR. SLADE: I believe it does, Your Honor.

24 THE COURT: What is the additional point you were
25 going to ask about, Mr. Morrissey?

1 MR. MORRISSEY: Your Honor, it's actually related
2 to one of Your Honor's points. One of Your Honor's points
3 was that crypto could be transferred only as directed by
4 customers.

5 THE COURT: Yeah.

6 MR. MORRISSEY: What I was going to suggest, Your
7 Honor, was a statement as to whether Binance Global has the
8 power to take customer crypto out of Binance, out of
9 Binance.US and transfer it to BAM Trading.

10 MS. OKIKE: That's addressed in the...

11 THE COURT: Isn't that covered by saying nobody
12 outside of Binance.US can access the customer crypto?

13 MR. MORRISSEY: Your Honor, I think that would. I
14 didn't hear -- I guess I didn't hear Your Honor say
15 Binance.US when you said that.

16 THE COURT: Yeah.

17 MR. MORRISSEY: That's fine. And again, as Ms.
18 Okike just said, perhaps that's already in the pre-existing
19 statement. Thank you, Your Honor.

20 THE COURT: All right, thank you.

21 Any other questions? I think we've -- yes?

22 MR. SLADE: I have no more questions for the
23 witness, Your Honor. Thank you.

24 MR. GOLDBERG: Your Honor, Adam Goldberg of Latham
25 and Watkins on behalf of Binance.US I do have one question

1 for the witness, and I would like to request a chambers
2 conference regarding Your Honor's request for a statement
3 from Binance.US

4 THE COURT: I'm not inclined to have a chambers
5 conference I don't think without a really special, good
6 reason. There are so many people interested in this
7 proceeding. Is there really nothing we can talk about on
8 the record?

9 MR. GOLDBERG: As I think Your Honor is aware,
10 this is a sensitive issue. This is a matter that the SEC is
11 actively looking at as we've seen in this proceeding. And I
12 think the SEC would be welcome to join in this chambers
13 conference with other parties or a sidebar conversation.
14 But that would be our request, Your Honor.

15 THE COURT: But it's not just the SEC, right?
16 Everybody on the telephone is interested in this. The
17 questions you want to raise with me, you can't do that in a
18 public proceeding? I don't understand.

19 MR. GOLDBERG: We will do so, Your Honor, if
20 that's what's required. We would request it be discussed in
21 confidence.

22 THE COURT: Yeah, I don't think I can do that.
23 You know, we are in the middle of a court hearing. So I
24 asked for something in public, so I'm not sure -- my
25 proceedings are supposed to be public. Occasionally if

1 there's a settlement issue or something and everybody who is
2 affected by it is present, then I understand having a
3 chambers conference. But I don't think we have that
4 situation here.

5 MR. GOLDBERG: Yes, Your Honor. I think the idea
6 of a chambers conference was to have -- explain our
7 rationale for our proposal and how to address the
8 certificate that you've requested and then come on the
9 record and discuss it.

10 MR. UPTEGROVE: Your Honor, William Uptegrove with
11 the SEC. May I be heard?

12 THE COURT: Yeah.

13 MR. UPTEGROVE: Thank you, Your Honor. I only
14 raised my hand because we actually have a similar request
15 that wanted to make of Your Honor. And if I may have a
16 moment to sort of update you on what we've been working on
17 and issues we wanted to update you about. Because it goes
18 along with counsel for Binance's request.

19 THE COURT: You wanted to update me privately on
20 what you've been working on?

21 MR. UPTEGROVE: Oh no, no, Your Honor. I wanted
22 to update you publicly right now. But it relates to a
23 similar type of issue as was just being discussed. What I'm
24 going to say -- I am proposing to put this on the record,
25 Your Honor.

1 THE COURT: I see.

2 MR. MALIONEK: Good afternoon, Your Honor. Robert
3 Malionek of Latham & Watkins, sorry to double team, for
4 Binance.US.

5 I think because of what counsel for the SEC is
6 raising right now, we had anticipated exactly that and the
7 need for that not to go onto the record. We wanted to be
8 able to talk about what we think is the solution to the
9 question that you asked, Your Honor, which is that there
10 have been references to representations that have been made
11 by Binance.US. We would like for those to be able to --
12 they've already been put into an officer's certificate. Mr.
13 Tichenor has already talked about the fact that the Debtors
14 and the professionals have relied on it. The UCC has asked
15 questions about it. And we simply want to be able to put
16 that into the record, but we want to be able to discuss that
17 with Your Honor first. And I think the issues that counsel
18 for the SEC want to raise before the SEC raises it as part
19 of the proceedings.

20 So we would invite them into the chambers
21 conference, but we do believe that we actually would need
22 that for purposes of security.

23 THE COURT: But is that an evidentiary issue that
24 you wish to discuss with me?

25 MR. MALIONEK: Yes, it is.

1 THE COURT: This seems highly irregular. You
2 know, if there is an evidentiary issue and I need to rule on
3 it by only hearing from a few of the parties, then I will do
4 so. But I really don't want to have any presentations of
5 facts at all, or argument at all, or explanations at all.
6 I'll just hear the evidentiary issue. That's the only thing
7 that I can think of that it would be appropriate to step
8 aside separately for.

9 And who are you suggesting being included in this?
10 The SEC...

11 MR. MALIONEK: The Committee, the Debtors.

12 THE COURT: U.S. Trustee?

13 MR. MALIONEK: U.S. Trustee. And yes, Your Honor,
14 we would simply outline for you our proposal to deal with
15 the evidentiary issue. And then we would expect that
16 afterwards we would come back into the courtroom so that,
17 Your Honor, we could make public what your determination is
18 from the sidebar in conference. In other words, we don't
19 want to hide anything from the public, we simply want to be
20 able to explain the rationale for it in chambers.

21 MR. MORRISSEY: Your Honor, Richard Morrissey for
22 the U.S. Trustee. I would just raise a general objection on
23 the record for the reasons Your Honor already stated. But
24 obviously if Your Honor rules, we would be happy to
25 participate. Thank you.

1 MS. RYAN: Your Honor, this is Ms. Ryan from the
2 State of Texas. We join in that objection.

3 UNIDENTIFIED SPEAKER: Your Honor, Kevin
4 (indiscernible) on behalf of New York (indiscernible). As
5 do we.

6 THE COURT: Okay. I've got --

7 MR. UPTEGROVE: Your Honor.

8 THE COURT: Yeah.

9 MR. UPTEGROVE: William Uptegrove for the SEC.
10 Irrespective of whether or not you were to grant Binance's
11 request -- if I may, I was already going to address an issue
12 that I mentioned, which was first, I just want to apologize
13 for any frustration Your Honor had yesterday with our
14 position. We heard your concern. We --

15 THE COURT: Hang on one second. Are we finished
16 with the witness? Yes?

17 MR. SLADE: Yes, Your Honor.

18 THE COURT: Okay. Did you have a question for
19 him?

20 MR. GOLDBERG: I had one question. And I think
21 depending upon Your Honor's ruling regarding our proposal,
22 it may be helpful to have the witness on the stand.

23 THE COURT: Well, let's finish with him subject to
24 recall if we need to deal with whatever this other issue is.
25 Okay?

1 MR. GOLDBERG: Okay. Thank you, Your Honor.

2 THE COURT: Do you have a question with him in
3 that context?

4 MR. GOLDBERG: Yes.

5 THE COURT: Go ahead.

6 BY MR. GOLDBERG:

7 Q Mr. Tichenor, you testified that the sale transaction
8 would be roughly \$100 million better for the estate than the
9 toggle. Does that \$100 million include any potential tax
10 benefits or savings that customers may receive by virtue of
11 an in-kind distribution?

12 A No, it does not.

13 Q Thank you.

14 MR. GOLDBERG: That's all, Your Honor.

15 THE COURT: Okay. All right. Thank you, Mr.
16 Tichenor, you are excused.

17 There's so much mystery here that it is difficult
18 for me to figure out if I have any proper grounds to have a
19 separate conference when I have objections that are pending
20 to the idea of having a separate conference.

21 MR. UPTEGROVE: Your Honor, William Uptegrove for
22 the SEC. If I may just continue with what I see as sort of
23 a completely separate request.

24 MR. MALIONEK: Your Honor, Robert MalioneK again.
25 I do not want to be in the habit of cutting off another

1 counsel while they're in the middle of speaking about
2 something. My only concern is that, you know, I'm not sure
3 since we're in the phase of the trial where we're putting on
4 evidence, is counsel for the SEC ready to put on evidence or
5 call a witness? Because otherwise, if it's to give a speech
6 or to give an update or anything along those lines, I'm not
7 sure that this is the proper time to do that. That's part
8 of why we want to be able to have the conference, Your Honor.

9 MR. UPTEGROVE: Your Honor, I simply have a simple
10 request. If I can just have a minute to make a request.

11 THE COURT: Okay.

12 MR. UPTEGROVE: I'm not going to make a speech.
13 I'm not going to make an argument.

14 THE COURT: Okay. Go ahead.

15 MR. UPTEGROVE: So Your Honor had concerns
16 yesterday about the SEC's position. We would like to be
17 able to address them. And I'm not going to go into that to
18 address it. I'm going to propose how we think that might be
19 able to be addressed, at least as best as we can address it
20 under the circumstances.

21 As I indicated yesterday, unlike other parties,
22 there are statutory restrictions on our ability to share
23 non-public information. As I'm sure Your Honor can
24 appreciate, there are also other practical considerations as
25 well. We do, however, want to do our best to address the

1 concerns being raised.

2 What we would request is that when it's convenient
3 for the Court -- I think Binance would like to do it right
4 now for us because the timing is not important -- either
5 later today or Monday -- if the Court would like to do it
6 now, that is fine. Whenever it's convenient for Your Honor
7 and the other parties, we would request that we be allowed
8 to have an in-camera conference with the Debtors, Binance,
9 and the U.S. Trustee. And we'll defer to the Debtors and
10 Binance with regard to whether the Committee should attend.
11 We would prefer to do it on our part, the SEC,
12 telephonically. But if the hearing is continued to Monday,
13 we're willing to come to New York and be there Monday
14 morning for the in-camera conference.

15 And what we would like to do there is to be able
16 to address the concern you raised and the grounds for doing
17 that are that we are statutorily limited to what we do in
18 public. There are issues with us disclosing things in
19 public. And we might be able to address some of your
20 concerns in-camera, and then hopefully that's an acceptable
21 way to move forward.

22 MR. SLADE: Your Honor, Mike Slade for the
23 Debtors. We object to that. Okay? If the SEC wants to put
24 on evidence, they can put on evidence. This is a continual,
25 frustrating issue for us. We don't want the SEC to have the

1 opportunity to go to chambers and tell Your Honor something
2 that they're not actually willing to put in evidence and,
3 you know, perhaps that would influence the result. That's
4 our concern. So we object.

5 MR. AZMAN: Your Honor, Darren Azman for the
6 Committee. To the extent there is an in-camera conference,
7 obviously the Committee would like to participate. I don't
8 believe the gentleman from the SEC invited us. But I would
9 like to be invited, obviously.

10 MR. MALIONEK: Your Honor, Robert Malioneck, if I
11 may. I know you're taking notes. If I may add on.

12 It seems like we may have some joint support for a
13 request to have this chambers conference with you. From our
14 perspective, it's only for purposes of explaining an
15 evidentiary issue and how to resolve it so that there's
16 perhaps one additional question for Mr. Tichenor that we
17 could ask and then put something into the record for Your
18 Honor. We just want to be able to explain what it is. I
19 think it's -- if the SEC wants to be able to participate in
20 that, we welcome that and welcome obviously the UCC and the
21 Trustee, Debtors to join as well.

22 THE COURT: Well, if the purpose of a conference
23 is to give me information that might address questions I
24 have raised regarding this transaction and to influence how
25 I might decide things, it seems very awkward and unusual to

1 suggest that that be done in private. It's an evidentiary
2 proceeding. There are times when evidence involves trade
3 secrets or other reasons why it cannot be disclosed
4 publicly, but those are very rare. And this is a peculiar
5 situation, because usually if that's the case, I have some
6 indication, some evidentiary indication of what it is that
7 is going to be offered so that I can decide whether it's
8 something that is so sensitive that it can be considered as
9 evidence, but people can -- some people otherwise can be
10 excluded. It seems particularly hard for me to say that it
11 can be considered in evidence and not only can the public be
12 excluded, but even people who are other objectors on similar
13 grounds could be excluded. That bothers me immensely. And
14 at least some of those people, including the state
15 regulators, have issued their objections.

16 So having expressed that concern, what can you say
17 to me?

18 MR. MALIONEK: Your Honor, Robert MalioneK again
19 just because so many people have been talking, I want to
20 make sure I'm clear for the record. W absolutely agree,
21 Your Honor, and join in the objection of the Debtors that
22 the chambers conference should not be a place to offer
23 evidence. That's not what we're asking for. This is to
24 explain the evidentiary basis for how we're going to get
25 through one rule of evidence that will allow us to put the

1 evidence before you, Your Honor, that you asked for. But
2 there are issues that we need to be able to speak to you in
3 private about, Your Honor.

4 We don't agree with the SEC that they should be
5 able to come back into chambers and put in evidence behind
6 the scenes. We don't think that that's appropriate.

7 MR. UPTEGROVE: Your Honor, William Uptegrove for
8 the record.

9 THE COURT: Just before --

10 MR. UPTEGROVE: We're not proposing to -- I just
11 want to be clear.

12 THE COURT: Go ahead.

13 MR. UPTEGROVE: I'm sorry.

14 THE COURT: No, go ahead.

15 MR. UPTEGROVE: I'm sorry, Your Honor. So we just
16 wanted to be clear about what the proposal is. Because
17 everyone has said -- not everyone, but the objectors have
18 said that we were proposing to put in evidence. That's not
19 the case. What we wanted to do is you had specific
20 questions that related to the impossibility because the SEC
21 wouldn't take a position, it wouldn't give you guidelines
22 about what the SEC thought. So it's not really argument.
23 I'm not going to -- what we would propose is actually
24 relatively brief. If we have authority to provide the Court
25 with information, our strong preference is that we would do

1 it in a way that is narrowly-tailored as possible. And the
2 other parties may actually want that.

3 But the point is we are not trying to put on
4 argument. It's not going to be an argument that we're
5 intending to make. We're not trying to put on any evidence.
6 But we wanted to answer Your Honor's questions because Your
7 Honor had what I would characterize as understandable
8 frustration that, you know, that we couched things in May
9 and wanted a little more certainty. And so we were
10 proposing to provide you with the best answers that we can.
11 And doing it in-camera would be highly preferential.

12 MR. MALIONEK: Your Honor, I'm confused. Because
13 counsel for the SEC spoke up just now while we're in the
14 middle of putting on evidence, or hopefully towards the tail
15 end of putting on evidence, to say that they wanted to
16 provide you with some information and an update on what
17 they're working on. I think those are direct quotes. That
18 sounds like evidence. That's not what we want to get into,
19 Your Honor, in a chambers conference.

20 We spoke up because we want to be able to -- it's
21 not put on evidence, but we do want to explain the rationale
22 for our argument regarding an evidentiary issue so that we
23 can ask one further question of the witness. That's all.

24 MR. AZMAN: Your Honor, Darren Azman for the
25 Committee again. I don't know what we're talking about. I

1 really don't. And I don't know whether to object or not.
2 It sounds like there's sensitive information that Binance
3 and there's sensitive information that the SEC has. But I
4 have a lot of concerns. You've heard all the creditors in
5 the past two days raising issues with the lack of
6 transparency in this case. So I would have concerns about
7 that. But I want to be respectful of whatever it is that
8 they don't want to talk about in court.

9 And so perhaps one solution is we could have an
10 in-camera conference to talk about whether a discussion
11 should be held in-camera or not because I don't know what
12 they're talking about.

13 MR. MALIONEK: That sounds like a fine solution.
14 We're not trying to hide evidence or information. We simply
15 have that evidentiary and legal argument to make, Your
16 Honor.

17 UNIDENTIFIED SPEAKER: Your Honor, pro se
18 creditor. Would like to be involved in that discussion.

19 THE COURT: I think the suggestion is that I have
20 a conference just to address the issue of whether it's
21 appropriate not to allow you to be in on that discussion.

22 I can in my head imagine things that you would
23 want to discuss and reveal to me that you would not want to
24 put on the public record and that also may not have any
25 bearing on this proceeding. I have no idea if that's what

1 this is about or whether there's some other reason why you
2 are concerned.

3 I think what I can -- the best I can do if I'm
4 being told that there is good reason and not an evidentiary
5 submission to have a private discussion just of the issue of
6 whether other information should be submitted in private,
7 that I can do that. But if in the course of that anybody
8 says anything that I think needs to be on the public record,
9 I'm putting it on the public record. And you ought to be on
10 notice of that.

11 MR. MALIONEK: Yes, Your Honor. We understand.
12 We do think there is good reason.

13 THE COURT: All right.

14 MR. UPTEGROVE: William Uptegrove for the SEC.
15 Understood, Your Honor.

16 THE COURT: Okay. So now how do we do this?
17 We've got the SEC by telephone. I guess the U.S. Trustee,
18 the Committee, Binance, the Debtor, come with me to my
19 chambers and we'll -- what's the number we can reach you at
20 at the SEC?

21 MR. UPTEGROVE: 404 -- well, actually -- yeah, we
22 can do that. 404-842-5765.

23 THE COURT: Five seven what?

24 MR. UPTEGROVE: Six-five.

25 THE COURT: Is that a direct to where you are?

1 MR. UPTEGROVE: It is.

2 THE COURT: Okay.

3 MR. UPTEGROVE: I'll have to get off the line
4 though and --

5 THE COURT: Okay.

6 UNIDENTIFIED SPEAKER: Your Honor?

7 THE COURT: Yeah.

8 UNIDENTIFIED SPEAKER: Your Honor, (indiscernible)
9 New York (indiscernible). Is there a reason that can be
10 articulated as to why (indiscernible) cannot attend the
11 chambers conference?

12 THE COURT: Well, you know, I guess that's what
13 I'm going to be told, that apparently I have to be told in
14 private. That's one of the issues that I'll ask about.
15 Okay?

16 (Recess)

17 THE COURT: -- worry or misapprehension about what
18 happened in our private little conference right now, I am
19 going to say what happened.

20 There were two issues, neither of which were
21 evidentiary. One was that Binance is willing to free the
22 Debtors from their confidentiality limitations and is to
23 allow the Debtors to submit the sworn statements that
24 Binance has previously given to the Debtors and I think was
25 concerned as to whether that amounted to a tendering by

1 Binance of a witness, which I don't believe it does. I
2 don't think anybody here has subpoenaed a Binance witness or
3 called a Binance witness. And so if the Debtors want to
4 offer those certificates, I would appreciate it. That's the
5 first issue that was discussed.

6 The second issue was that the SEC wished to try to
7 answer questions that I had posed at the beginning of the
8 hearing as to what the SEC's position is on some of these
9 issues. But I gather that in the first instance they were
10 asked to find out if they could tell that to me separately
11 rather than in public. I responded that I am not
12 comfortable hearing that explanation in private. This is a
13 public court proceeding. I made very public what my
14 questions were. The SEC has made objections. Other people
15 have made objections. Anything that further explains the
16 basis for the SEC's position it seems to me is something
17 that everybody is entitled to hear. So if the SEC has an
18 explanation, I ask that that be put on the public record and
19 not done privately. Okay?

20 So don't think we're officially closed the
21 evidentiary record, but I do have quite a bit of authority
22 over the order of proceedings. And so if the SEC wishes to
23 make a clarifying statement as to its position, I welcome
24 them to do so.

25 MR. UPTEGROVE: Thank you, Your Honor. William

1 Uptegrove for the United States Securities and Exchange
2 Commission. Again, Your Honor, just to be clear, when Your
3 Honor raised the issue yesterday, we went back internally
4 within the SEC and worked as diligently as possible all
5 throughout the SEC to try our best to answer your questions.
6 And I have been authorized to provide the following
7 additional information. I don't think it satisfies all of
8 your questions, but under the circumstances, this is what I
9 have authority to provide.

10 So, Your Honor, this is a complicated situation,
11 in part because seeking relief against a defunct entity is
12 often not productive and given the nature of our enforcement
13 investigation, which are non-public. Additionally opinions
14 of the staff do not reflect the views of the Commission,
15 which has not taken a position with respect to Voyager or
16 Binance. With that being said, the staff believes based
17 solely on the facts and circumstances currently known to the
18 staff that the offering and sale of BGX tokens have the
19 attributes of a securities transaction -- securities
20 transactions. Staff also believes that Binance.US is
21 operating an unregistered security exchange in the United
22 States. The Commission has not made any determination on
23 either of these issues. The staff beliefs do not represent
24 the position of the Commission. And that's all I wanted to
25 provide, Your Honor. Thank you.

1 MR. MALIONEK: Your Honor, Robert MalioneK. My
2 understanding -- correct me if I'm wrong -- was that there
3 would be no information or evidence that would be offered.
4 That sounded to me to be different than what my
5 understanding was anyway. And so we would move to strike.

6 THE COURT: It's not evidence. Right? It's a
7 statement of position. Yesterday, the SEC said that it
8 wasn't taking a position one way or the other. Today, it's
9 saying that the staff is informing me of what it believes,
10 but that the Commission as a whole is still taking no
11 position. That just essentially tells me what a contention
12 is. Okay?

13 So at least I know that the SEC isn't just saying
14 maybe, that it's saying it thinks that there are issues.
15 But I still don't have evidence and I still don't have very
16 much clarity as to exactly why they think there are issues
17 or how they would affect this transaction. But I guess I
18 appreciate the limited clarification you have been able to
19 provide. Okay?

20 Is there any other evidence that anybody wishes to
21 offer? To turn back to the evidentiary record.

22 MS. RYAN: Your Honor, this is Ms. Ryan from
23 Texas. The statements or affidavits being submitted by
24 Binance, we would object to those as hearsay. And once they
25 are submitted, will they be available to everyone, I

1 suppose, all the interested parties?

2 THE COURT: Well, I'll ask them to be put on the
3 public record. But I think they're being offered by way of
4 explaining the Debtor's due diligence, in which case they're
5 not hearsay, they're evidence of things that the Debtors
6 looked at and relied upon.

7 MR. SLADE: Your Honor, Mike Slade for the
8 Debtors. We would offer the Binance officer certificate
9 that Mr. Tichenor testified to extensively as Debtor's
10 Exhibit 26. And if you admit it, we will put it on the
11 public docket tonight. Or maybe tomorrow.

12 THE COURT: Do you have them here, by the way?

13 MR. SLADE: I do have -- yes. We have one copy
14 with a one underline on it.

15 THE COURT: Well, just put it on the docket and
16 I'll download it from there.

17 MR. SLADE: Yes, sir. We will.

18 THE COURT: So to the extent there's a hearsay
19 objection, I overrule it.

20 MR. SLADE: Thank you, Your Honor. The Debtors do
21 not have any more witnesses.

22 THE COURT: What about the objections we have as
23 to the selection of the plan administrator. Is anybody
24 going to address that?

25 MR. SLADE: Yes, Your Honor. The Committee is

1 going to put on a witness, right, or whenever Your Honor
2 would like, to testify about that.

3 THE COURT: Let's go there.

4 MR. CALANDRA: Your Honor, John Calandra from
5 McDermott Will & Emery on behalf of the Committee. We would
6 like to call Paul Hage, who would be plan administrator,
7 Your Honor.

8 THE COURT: Okay.

9 Mr. Hage, do you promise and swear that the
10 testimony you are about to give will be the truth, the whole
11 truth, and nothing but the truth, so help you God?

12 MR. HAGE: I do.

13 THE COURT: State your full name for the record,
14 please.

15 MR. HAGE: Paul Robert Hage.

16 THE COURT: Okay. Please proceed, Counsel.

17 MR. CALANDRA: Thank you.

18 DIRECT EXAMINATION OF PAUL HAGE

19 BY MR. CALANDRA:

20 Q Mr. Hage, what is your current occupation and
21 employment?

22 A I am a partner and co-chair of the bankruptcy and
23 restructuring group at Taft, Stettinius & Hollister. And I
24 am based in Detroit, Michigan.

25 Q And how large is your firm, Taft?

1 A Taft has roughly 850 attorneys, located primarily in
2 the Midwest.

3 Q Where are you admitted, sir?

4 A I am admitted in the state of Michigan, the Eastern and
5 Western District of Michigan District and Bankruptcy Courts,
6 the Sixth Circuit Court of Appeals, and the United States
7 Supreme Court.

8 Q Okay. You are aware that the Committee has selected you
9 to serve as plan administrator of the winddown entity
10 pending the Court's approval?

11 A I am.

12 Q And you are willing to do so?

13 A I am.

14 Q Can you briefly describe for us your background? Let's
15 just quickly start with your education and then we'll move
16 on.

17 A Sure. I graduated with a bachelor's degree from
18 Michigan State University. I have a law degree from Loyola
19 University Chicago. And I have a master's of laws, or an
20 LLM degree, in bankruptcy law from St. John's University
21 School of Law here in New York.

22 Additionally, during law school, I interned with the
23 Honorable George Steeh, a U.S. district court judge in the
24 Eastern District of Michigan, and with the Honorable
25 Elizabeth Stong, United States Bankruptcy Court Judge from

1 the Eastern District of New York.

2 Q And what did you do after graduation and you got your
3 LLM, what was your employment?

4 A So upon graduating from St. John's, I moved back to
5 Michigan, which is where I grew up. And I have a bankruptcy
6 attorney. It's substantially all that I do is practice
7 bankruptcy law for the last 16 or 17 years. My practice
8 primarily consists of representing unsecured creditors and
9 creditors' committees and post-confirmation fiduciaries, be
10 it a liquidating trustee type position or Chapter 7
11 bankruptcy trustees.

12 Q And now you are the co-head of the bankruptcy practice
13 at your firm?

14 A I am co-chair of the bankruptcy practice at Taft, yes.

15 MR. CALANDRA: Your Honor, may I approach the
16 witness? I would like to hand him his resume.

17 THE COURT: Yes. You don't need permission to
18 approach the witness.

19 MR. CALANDRA: Would Your Honor like a copy?

20 THE COURT: Yes, please. Thank you.

21 BY MR. CALANDRA:

22 Q Okay. I've showed you what is on the docket for the
23 record as Docket Number 1109-2. Do you have that in front
24 of you, sir?

25 A I do.

1 Q Okay.

2 A I see I'm wearing the exact same tie in this picture
3 that I am wearing today.

4 Q That's good. You're frugal. What is the document,
5 sir, that is 1109-2?

6 A The document is my resume.

7 Q Okay. Did you prepare this document?

8 A I did.

9 Q Is it a true and correct copy of your resume, sir?

10 A It is.

11 MR. CALANDRA: Your Honor, we would like to move
12 the admission of this document into evidence as 1109-2.

13 THE COURT: Any objections? All right, the
14 Exhibit is admitted.

15 (Exhibit 1109-2 entered into evidence)

16 BY MR. CALANDRA:

17 Q Let's just take a quick look. We're not going to spend
18 too much time on this, but I have a few questions about your
19 resume that I'd like to elicit testimony on. Let's start
20 with -- I see you say that you've been twice selected by the
21 Sixth Circuit Court of Appeals for a finalist for bankruptcy
22 judgeship. Could you explain that a little bit?

23 A Sure. Those people who know me know that my career
24 goal is to be a federal bankruptcy judge.

25 THE COURT: Has this hearing changed your mind?

1 BY MR. CALANDRA:

2 A It has not. This is what I do. And so I have applied
3 on a few occasions from fairly early on my career to be a
4 judge. It's a pretty rigorous application process. There
5 is an expansive application that asks just about every type
6 of question about somebody's professional experience and
7 also their character. And I have applied and gone through
8 that process a couple of times in the Sixth Circuit. It's
9 done differently in each judicial circuit.

10 But in the Sixth Circuit, the Sixth Circuit Court of
11 Appeals appoints a merit selection panel consisting of
12 members of the local bar to conduct interviews and an
13 initial background check of each candidate. And then
14 there's a fairly fulsome interview process that is
15 conducted. From that process, the merit selection panel
16 recommends to the Court of Appeals three to five finalists
17 for the position. Usually it's three to five. I'm not sure
18 it's a hard and fast rule, but that's normally what they do.
19 And I have twice been selected as a finalist, in 2018 and
20 more recently in 2021.

21 As a finalist then, there is additional sort of
22 interview and background process and the interview with
23 judges on the Sixth Circuit Court of Appeals. I've done
24 that twice.

25 Q Okay. Thank you for the explanation. You also said

1 that you were co-director of the Conrad Duberstein National
2 Bankruptcy Moot Court Competition. Is that why you're in
3 town this week?

4 A That is actually why I'm in town this week, is that I
5 run the -- it's the bankruptcy court competition. It's run
6 in conjunction with the American Bankruptcy Institute in St.
7 John's University School of Law. I help to run it. I serve
8 as a judge at the competition and I write the problem. And
9 I've done that with a judge in Grand Rapids for the last six
10 years.

11 Q That's great. Let's just focus a little bit on your
12 professional associations and memberships, starting with the
13 American Bankruptcy Institute. For those who are on the
14 phone who are not aware of that, can you explain what that
15 is?

16 A Sure. The American Bankruptcy Institute I think is the
17 largest organization of bankruptcy and insolvency
18 professionals and judges in the country. I think it's a
19 highly -- it's a well-recognized organization. I've been
20 very involved with it since even before starting practice,
21 writing articles, speaking at conferences, attending
22 conferences.

23 In 2019, I was selected to be a member of the ABI's
24 board of directors, and I have served in that capacity for
25 the last three or four years. In 2022, I was selected from

1 the Board to be the ABI secretary and a member of its
2 executive committee. So it's an organization that I'm very
3 active with.

4 Q Okay. And I see your professional associations span a
5 couple of pages, and there are maybe about 20. And I don't
6 want to spend the time to go through that, but I was -- it
7 did catch my attention the American College of Bankruptcy
8 fellow. Could you explain that?

9 A Yeah. The American College of Bankruptcy is an
10 honorary organization that recognizes people who have done a
11 lot and are held in high character, high regard, have done a
12 lot in the bankruptcy community. A high standard of
13 practice and focused on sort of the right types of things.
14 And I was honored to be selected as a fellow last year.

15 Q On the top of Page 3, it lists honors and awards. And
16 you have a number of them. They all relate to bankruptcy.
17 Am I right?

18 A That's correct. Again, 99 percent of my practice
19 really is bankruptcy law.

20 Q And then under books, it seems that you're an author or
21 co-author of six books relating to bankruptcy.

22 A That's correct.

23 Q And publications goes on from Page 3 to Page 4, Page 5,
24 Page 6, Page 7, to the top of Page 8. Am I correct?

25 A That's correct.

1 Q Largely on what subjects?

2 A I do a lot of writing.

3 Q On what subjects?

4 A Entirely on bankruptcy law.

5 Q Okay. And then if I'm correct, your speaking
6 engagements go on from pages 8, pages 9, and pages 10,
7 largely on bankruptcy subjects?

8 A Exclusively on bankruptcy subjects, yes.

9 Q Okay.

10 A Or other insolvency-type issues.

11 Q I know you said you're here this week because of the
12 Duberstein Bankruptcy Moot Court. But were you in court
13 yesterday?

14 A I was.

15 Q Okay.

16 A And to clarify, given the importance of these hearings,
17 I likely would have been here anyway. Perhaps
18 telephonically, but certainly I recognize the importance of
19 these hearings.

20 Q Have you been involved at all in any connection in the
21 Voyager bankruptcy since it started?

22 A I have.

23 Q Okay.

24 A I represent Jason Raznick.

25 Q And who is that?

1 A Jason Raznick is the chair of the Creditors' Committee.

2 Q Okay. And what have you been doing in terms of your
3 representation of him related to Voyager?

4 A In my capacity representing him, I have been actively
5 involved with the Creditors' Committee. The Committee
6 communicates regularly as throughout this case, meets
7 weekly, frequently more often than weekly to discuss the
8 very difficult issues in this case. And I have participated
9 in not all, but probably the majority of those calls over
10 the last seven months. I have reviewed the pleadings in the
11 case. So I am very familiar with the case and have
12 participated in that capacity.

13 Q For those who are on the phone who might be wondering,
14 when did you first meet Mr. Raznick, when would that be?

15 A I was first introduced to Mr. Raznick in July of 2022,
16 shortly after the commencement of these bankruptcy cases.

17 Q So prior to the commencement of these bankruptcy cases,
18 you did not know him?

19 A I did not.

20 Q Have you actually ever met him in person?

21 A I have not actually met Mr. Raznick in person. We've
22 talked regularly of course on the phone and on Zoom. In
23 2022, that's a lot of how we communicate.

24 Q Okay. And how did you come to meet Mr. Raznick and
25 work with him?

1 A Right. Well, Mr. Raznick was one of the largest retail
2 customers in this case. His brother is a partner at my law
3 firm. And so when the bankruptcy case was commenced and he
4 needed bankruptcy counsel, he was referred to me.

5 Q As the co-head of bankruptcy practice for your firm?

6 A That's correct.

7 Q What about McDermott Will & Emery? Have we ever worked
8 together, McDermott Will & Emery and you?

9 A I have not worked with McDermott Will & Emery prior to
10 this case.

11 Q Okay. And when was the first time you ever met Mr.
12 Azman?

13 A In person, yesterday. We have been on Zoom many, many
14 times.

15 Q What about me? When was the first time we met?

16 A Same.

17 Q Okay. And you said you've attended the committee
18 meetings. Is that right?

19 A Yes. And attended many of the hearings in this case as
20 well.

21 Q Approximately how many committee meetings have you
22 attended?

23 A I would estimate maybe 30. As I said, there's weekly
24 committee calls that have been held to talk about the very
25 difficult issues in this case. And at different points,

1 they may be more frequently than weekly. So I would say 30
2 or 40 meetings maybe.

3 Q Do you feel you are familiar with the Committee's work
4 in the matters in this case?

5 A Very.

6 Q Okay. Do you think that will help you should you be
7 appointed as plan administrator?

8 A I do. There's a lot to get up to speed with here, and
9 I'm up to speed with a lot of it already.

10 Q Is there in place any recusal process should in the
11 future you have any conflict of any kind? What happens
12 then? What is the process under the plan as you understand
13 it?

14 A There is. At my request, there is a provision in the
15 plan administrator agreement that is in one of the plan
16 supplements that contemplates that in the event there is any
17 potential conflict of interest that might arise, that I
18 would recuse myself from that matter. And of course as an
19 attorney and as a fiduciary, I take issues of conflicts of
20 interest and ethical responsibilities very, very seriously.

21 And so in the event that I or anybody else involved
22 with the plan -- because there's a Plan Administrator
23 Oversight Committee. If I or any of the members of the Plan
24 Administrator Oversight Committee believed that there was a
25 potential conflict of interest there, then I would recuse

1 myself from that under that provision of the plan
2 administrator agreement and one of the three members of the
3 oversight committee would serve as the plan administrator in
4 that capacity. To be clear, I'm not aware of any conflicts
5 that might exist, but that's a protective measure that is a
6 common thing that I see in fiduciary agreements like this,
7 liquidating trust agreements, to address issues. Because
8 you just never know what's going to come up down the road.

9 Q Understood. And my question was only prophylactic. Is
10 Mr. Raznick on the Oversight Committee?

11 A He is not.

12 Q Now, did you attend the meeting -- I'm going to ask a
13 series of questions because I know there's an objection that
14 related to Mr. Raznick. And I think the allegation was
15 that, quote, "Mr. Ehrlich may have influenced Mr. Raznick's
16 decisions to not pursue third party causes of action more
17 decisively, and the UCC chair, that he may have influenced
18 other UCC members to do the same."

19 Now, were you at the committee meeting on October 16th,
20 2022 where the vote was taken to support the settlement, the
21 D&O settlement?

22 A I was.

23 Q Okay. Did Mr. Raznick speak out in favor of that
24 settlement at that meeting or against it?

25 A He aggressively opposed at that time.

1 Q Did he vote for the settlement?

2 A He was the last committee member to vote, and he
3 abstained.

4 Q Okay. So to the extent there's an allegation that he
5 was influencing folks on the Committee to support the
6 settlement, what have you to say about that?

7 A That is absolutely not true to my knowledge.

8 Q Okay. One last question. What -- can you describe to
9 the Court, what is your experience in dealing with post-
10 confirmation fiduciaries?

11 A Substantial. It's a substantial part of my practice.
12 I have on many occasions represented, as I noted earlier,
13 post-confirmation in Chapter 11 cases, liquidating trustee-
14 type fiduciaries. I have also on multiple occasions
15 represented Chapter 7 trustees. And frequently the role in
16 those cases has been very similar to the role here. It is
17 investigating and pursuing causes of action for the benefit
18 usually of unsecured creditors. Causes of action like the
19 causes of action that can and should be investigated here,
20 claims involving breaches of fiduciary duties, claims
21 against insurance companies, fraudulent transfer-type
22 claims, the types of things that you determined that was
23 used earlier today, the blocking and talking of sort of
24 bankruptcy post-confirmation litigation. I am very, very
25 familiar with that law. I am very, very familiar with the

1 different wrinkles, the legal issues that come up with those
2 cases, the defenses that are asserted. I've negotiated with
3 insurance companies before. It's what I do.

4 Q Okay.

5 MR. CALANDRA: Your Honor, I have no further
6 questions.

7 THE COURT: All right. Any cross-examination of
8 Mr. Hage? First start with anybody in the room who has a
9 question. I see we have one taker.

10 MR. POSNER: Your Honor, for the record, David
11 Posner from Patrick Townsend, Kilpatrick, Townsend &
12 Stockton. I am counsel for the Ad Hoc Group of Equity
13 Interest Holders of Voyager Digital Limited.

14 So for the record, I am not objecting the
15 appointment of Mr. Hage as the plan administrator. We did
16 have objections to the plan, which we have resolved, Your
17 Honor. But subsequent to the resolution of them, when the
18 second amended plan was filed and when the third amended
19 plan was filed, there was some language in that plan which
20 concerned us, which I've been here for the last two days
21 hoping to address with the Court. That's more in the nature
22 of argument.

23 Now that Mr. Hage is on the stand, I have some
24 questions for him that are relevant to that language in the
25 plan that concerns us. So if I might, I would like to ask

1 him a couple of questions.

2 THE COURT: Go ahead.

3 MR. POSNER: Okay. Thank you.

4 CROSS EXAMINATION OF PAUL HAGE

5 BY MR. POSNER:

6 Q Mr. Hage, you testified just before that you were
7 actively involved in the Committee and all the meetings and
8 the deliberations, correct?

9 A I wouldn't say all of the deliberations, but
10 substantially all, yes.

11 Q You actively participated in committee meetings,
12 correct?

13 A I did.

14 Q And so you are generally familiar with the issues in
15 the Debtor's Chapter 11 cases from the perspective of the
16 Committee?

17 A I am.

18 Q Are you familiar with --

19 A And from the perspective of other parties based on the
20 pleadings and the arguments made in the case. I am very
21 familiar with all of the issues.

22 Q Thank you.

23 A Well, many of the issues.

24 Q Have you reviewed the plan? In particular the second-
25 amended plan or the third amended plan? I know they were

1 both filed within the last two or three days.

2 Q I have reviewed various versions of the plan, including
3 I believe the most recent version that's on file. It's
4 hard, as it has been amended. But yes, I am generally
5 familiar with the concepts with respect to the plan.

6 Q There's sections in the plan that deal with the
7 appointment of the plan administrator, correct?

8 A There are.

9 Q And you probably don't have the plan in front of you.
10 I unfortunately don't have a third amended plan with me, but
11 I do have the second amended plan. And the provisions with
12 respect to the -- I need my glasses to read it. Docket
13 Entry 1117 is the Second Amended Plan. And the provision
14 dealing with the appointment of a plan administrator start
15 at Page 36. Are you familiar with those provisions of the
16 plan generally?

17 MR. CALANDRA: Your Honor, may I object? If
18 you're going to ask him questions about something that
19 changed, are you representing there are no changes to this?

20 MR. POSNER: I haven't compared the Third Amended
21 and the Second Amended. I don't think these provisions
22 changed.

23 MR. CALANDRA: Why don't you give him the Third
24 Amended so that we're asking him about the plan that's
25 before the Court?

1 MR. POSNER: I don't have the Third Amended with
2 me.

3 THE COURT: Why don't we first cut out and excise
4 all the beginning of the question and just ask him if he's
5 familiar with the provisions of the plan regarding the
6 selection of a plan administrator.

7 Are you?

8 THE WITNESS: I am.

9 THE COURT: Okay.

10 MR. CALANDRA: Your Honor, I don't mind a little
11 latitude, but this is well outside the scope of my direct.

12 THE COURT: It's okay. Unless you want me to
13 recall the witness again later, we will do it all now.

14 BY MR. POSNER:

15 Q So you're generally familiar with the provisions with
16 respect to the appointment of a plan administrator?

17 A Generally, yes.

18 Q And there's a laundry list in the plan that's entitled
19 responsibilities of the plan administrator, correct?

20 A That's correct.

21 Q And there's one winddown debtor for all of the
22 entities, correct?

23 A I believe that is correct, yes.

24 Q And so you would be the plan administrator for all of
25 the debtor entities, correct?

1 A I believe that is correct. That is my understanding.

2 Q And some of the responsibilities of a plan
3 administrator, or one of the responsibilities of a plan
4 administrator, it's in 5C, is appointing an independent
5 director at each debtor to act as a fiduciary for such
6 debtor entity in connection with the resolution of
7 intercompany claims.

8 A Well, let me just say it would be helpful to have that
9 document to look at.

10 Q Okay.

11 A I can't confirm what that says. But I will say in the
12 interest of trying to shortcut this, that I am familiar that
13 that is a provision in the plan.

14 Q Okay.

15 A I don't have the specific language or any -- you know,
16 I know that's one of the...

17 Q But you're familiar with the provision that empowers
18 the plan administrator to --

19 A I am generally familiar with the powers of the plan
20 administrator, yes.

21 Q To appoint independent -- an independent director at
22 each debtor entity?

23 A Correct, yes.

24 Q Are you familiar that there is a dispute involving
25 intercompany claims in the debtor's bankruptcy cases?

1 A I am.

2 Q And what's your knowledge of that dispute?

3 A That a dispute exists on that and that my understanding
4 is at a very high level that the settlement that has been
5 reached, subject to the revision I think that you just
6 mentioned at the beginning of your questioning, is that
7 those issues will be addressed going forward.

8 Q Okay. So it's your understanding that the intercompany
9 claim dispute hasn't been resolved, that it's going to be
10 resolved at some later date.

11 A Well, let me just say that -- yeah, that is my
12 understanding. I am not yet the plan administrator. I have
13 not been involved in negotiations about those issues. But
14 generally speaking, I have -- from what I have been able to
15 glean from reading from the documents, that is my
16 understanding, yes.

17 Q You are aware that there are currently independent
18 directors at each one of the Debtor entities?

19 A Certainly.

20 Q Are you aware that there has been ongoing discussions
21 and negotiations among the independent directors at the
22 debtor entities regarding the intercompany claims?

23 A I don't have any specific knowledge about that. It
24 would surprise me if there weren't ongoing discussions.
25 Because, as I noted earlier, I know this has been an issue

1 in the case that you've prosecuted on behalf of your
2 clients.

3 Q Are you familiar with the Debtor's schedules and
4 statements?

5 A I read them months ago.

6 Q Okay. Are you aware that when the schedules and
7 statements were initially filed, they listed the
8 intercompany claims as not disputed or contention they're
9 unliquidated?

10 MR. SLADE: Your Honor, I would object. This is
11 not relevant.

12 THE COURT: Are we litigating the merits now?

13 MR. POSNER: No, I'm just...

14 MR. SLADE: I think we are, Your Honor.

15 THE COURT: What's the point of that?

16 MR. POSNER: I was just asking if he was familiar
17 with it.

18 THE COURT: Why?

19 MR. POSNER: Because, Your Honor, two nights ago
20 they amended the schedules to change that. And he is going
21 to be the plan administrator, and presumably he is going to
22 end up dealing with -- potentially dealing with those
23 issues.

24 THE COURT: So what?

25 MR. POSNER: Well, because he is going to be the

1 plan administrator for all of the entities. What I wanted
2 to ask him was should the intercompany disputes continue, is
3 he going to handle them or is he going to recuse himself and
4 allow independent directors that he is going to appoint
5 handle them?

6 THE COURT: Well, you can ask him that. What does
7 that have to do with the schedules?

8 MR. POSNER: It doesn't. I was just trying to lay
9 a foundation to see if he was familiar with the topic, Your
10 Honor.

11 BY MR. POSNER:

12 Q So, Mr. Hage, you are going to be the plan
13 administrator for all the Debtor entities. The intercompany
14 claims have to be resolved. You're going to appoint
15 independent directors. Is it going to be the independent
16 directors who are going to handle that since as the plan
17 administrator for all of the entities, you couldn't
18 represent all of the entities in a dispute over intercompany
19 claims, correct?

20 A So what I would say to that is that that's an issue
21 that I have not investigated yet, as again, I am not yet the
22 plan administrator. And so it would be an issue that I
23 would look at with professionals. As all fiduciaries do,
24 they rely on the advice of professionals. It's something we
25 would look at and make a determination at that time. But I

1 am not prepared to make any statements here today about how
2 any future litigation would be dealt with, nor do I think
3 that would be appropriate.

4 Q Okay. But you would agree as the plan administrator
5 for all the entities that there was a dispute amongst the
6 entities, you couldn't be on both sides of the dispute.

7 MR. SLADE: Your Honor, I object. That is not an
8 appropriate question for this proceeding.

9 MR. AZMAN: Your Honor, the Committee agrees.
10 This is highly inappropriate. He's trying to box the
11 witness in a future role where he hasn't even been approved
12 to be a plan administrator. I don't understand what the
13 line of questioning is designed to get at given what the
14 purpose of this hearing is.

15 THE COURT: Well, I understand. But it seems to
16 me that it's focused more on an objection to a plan
17 provision rather than to the qualifications of this
18 individual to serve as the plan administrator. And it's not
19 clear to me that we even have a plan objection or that the
20 witness's opinion on that subject means anything. It's my
21 opinion about whether it's appropriate or not. So do you
22 really need to pursue that?

23 MR. POSNER: I don't, Your Honor.

24 THE COURT: Okay.

25 MR. POSNER: I don't have any more questions for

1 the witness then, Your Honor.

2 THE COURT: Thank you. Is there anybody else here
3 who wishes to cross-examine this witness?

4 How about anybody on the telephone? Does anybody
5 wish to cross-examine Mr. Hage?

6 Yes, Your Honor. I am a pro se creditor. My name
7 is (indiscernible).

8 THE COURT: Okay. Please proceed.

9 BY UNIDENTIFIED SPEAKER:

10 Q Hi, Mr. Hage. I just want to make sure I heard you
11 correctly. Did you say that Jason Raznick's brother works
12 at your law firm?

13 A I did. That is correct.

14 Q Okay. And so I just want to confirm, is his name Brian
15 Raznick?

16 A Yes.

17 Q Okay. How is it -- because one of the things that I
18 know within my -- you know, amongst us creditors, because we
19 all are part of a community and we all talk pretty much on a
20 daily basis. And I know that one of the biggest themes or
21 concerns in this case has been this person knows this
22 person, this person does this person a favor, and everyone
23 is just, you know, kind of scratching each other's backs.

24 You are the attorney for Jason Raznick. His brother
25 works at your law firm. You've been dealing with McDermott,

1 and now you are nominated to be the administrator for the
2 winddown entity. How does none of all of that constitute
3 some kind of conflict of interest?

4 A As I said earlier, I take attorney ethical rules
5 regarding conflicts of interest very seriously. I don't
6 believe there is any conflict of interest here. I was not -
7 - I pitched for this position to serve as the plan
8 administrator. The Creditors' Committee, which consists of
9 seven retail customers, each of whom have their own very
10 strong opinions about this case, the history of the Debtors.
11 And not all on the same page. And I pitched amongst
12 multiple candidates for this role and was selected
13 unanimously to serve. I have at my own insistence asked
14 that in the plan administrator agreement which would govern
15 my conduct going forward, the provision that I mentioned
16 earlier that would require me to recuse myself if I or any
17 member of the Plan Administrator Oversight Committee
18 believed that there was any potential conflict of interest,
19 that's what we would do. Of course all of my conduct in
20 that capacity is subject to the supervision of the
21 bankruptcy judge.

22 And in terms of Mr. Raznick and McDermott Will & Emery,
23 as noted in the questioning that was asked to me, I don't
24 have any -- I am not beholden to them. I don't have a long-
25 term relationship with them. My relationship has been

1 exclusively in the context of this case.

2 Q Okay. So I just want to make sure I heard you
3 correctly. Are you saying that all seven members of the UCC
4 voted to have you be the administrator of the winddown
5 entity?

6 A Well, to be clear, because I was one of multiple people
7 who had applied for the job, so to speak, I was not present
8 for the deliberations. That is my understanding though, is
9 that that's how it turned out. That was the way the vote
10 came out.

11 Q Okay. Because I thought I heard you say unanimously,
12 you were voted unanimously. So I guess I took that to mean
13 that every member, all seven members voted for you. Is
14 there a way to find out how many members voted to have you
15 and how many members did not?

16 A I'm not sure I can answer that question. Again, I
17 wasn't present for the vote. That is my understanding of
18 how the vote turned out.

19 UNIDENTIFIED SPEAKER: Your Honor, would someone
20 at McDermott be able to answer that question since they
21 represent the UCC?

22 MR. AZMAN: We're happy to look back at the
23 minutes to confirm. I don't remember off the top of my head
24 if it was unanimous. It was certainly the majority. That
25 was the vote.

1 THE WITNESS: Well, that's what I was going to
2 add.

3 MR. AZMAN: I'm also not testifying to
4 (indiscernible).

5 BY MR. POSNER:

6 A If it was -- it may -- I believe it was a unanimous
7 vote to my understanding. But in any event, it was a
8 majority of the vote because I was the person elected and
9 identified in the plan.

10 Q Yeah, I understand that. I guess I'm just trying to --
11 like, it's just if it's unanimous meaning all seven, then
12 that makes me think, wow, like, they all don't see any
13 conflict of interest in having you? But if say, you know,
14 two or three, because four would be the majority, you know,
15 objected to it, then at least I see that there are people
16 there -- you know, the UCC members who represent us
17 creditors, that they are along the same lines of thinking
18 that I am, that how does this not seem like they have a
19 conflict? It's like Jason Raznick's brother is a partner at
20 your law firm. So he needed a lawyer. He goes to his
21 brother, who works at your law firm. And then you are the
22 one representing Jason. Jason is the chair of the UCC. The
23 UCC is represented by McDermott. And there was already a
24 lot of talk about how Jason knew Steve Ehrlich and knew Sam
25 Bankman-Fried and, you know, we're all friends and we're all

1 buddies and we're all just, you know, handing each other
2 money. And we're all just keeping it in this tight-knit
3 circle. You know, I just don't see how that -- people are
4 benefiting from people knowing each other. And that's what
5 I mean. It's like one person scratches the other person's
6 back and we're all in cahoots, which a lot of us creditors
7 feel like we were never properly represented and that the
8 money expenditures and the decisions that have been made
9 throughout this entire case have been completely against us
10 because it's part of the boys club of let's scratch each
11 other's backs. Do you see where I'm getting?

12 THE COURT: Yeah. It's not a question.

13 MR. SLADE: I object. That was argument. The
14 facts are in evidence. And I object. That was not a
15 question.

16 MR. CALANDRA: I join, Your Honor.

17 THE COURT: To the extent that there's a question
18 in there, I think it is for you to explain, Mr. Hage. Do
19 you think that your partner's connection with -- as being a
20 brother of Mr. Raznick and the fact that that led to your
21 appointment gives rise to a conflict in the performance of
22 your duties as plan administrator? And if you don't think
23 it does, please explain why it does not.

24 THE WITNESS: I do not think it does. First of
25 all, the plan administrator is Paul Hage, not my law firm,

1 not Jason Raznick. As I noted, I do not have a long-term
2 relationship with Jason Raznick.

3 The theories alleged -- raised in some of the
4 objections about the relationship between Mr. Raznick and
5 Mr. Ehrlich, as I noted earlier, are not accurate. He
6 argued against the proposed releases initially that are now
7 incorporated into the plan. And while it is true that there
8 was a professional and maybe a friendly even relationship
9 that existed between Mr. Raznick and Mr. Ehrlich prior to
10 the bk filing, Mr. Raznick was one of the largest retail
11 customers in this case. That's why he was appointed to the
12 Creditors' Committee by the Office of the United States
13 Trustee. And any cordial relationship that existed
14 previously with Mr. Ehrlich certainly ended at the point
15 where Mr. Raznick's significant funds were locked up, just
16 like all the retail customers. His goal and my goal
17 throughout this case has been singular; to get creditors,
18 retail customers, as much of their money back as possible as
19 soon as possible.

20 UNIDENTIFIED SPEAKER: So the person, anyone at
21 McDermott, would it be possible for you guys, whenever you
22 get a chance, to send out a tweet from the official Voyager
23 UCC account letting us know -- obviously you do not have to
24 divulge who it is, but -- and know you guys have given
25 numbers before -- but letting us know how many members voted

1 yes and how many members voted no of Mr. Hage.

2 MR. AZMAN: This is Darren Azman from McDermott
3 for the Committee. I'll just tell you right now. I have
4 the minutes from the meeting. And again, this is not
5 evidence. I wouldn't be able to introduce it through this
6 witness because he was not there.

7 There are -- just a moment. There are four
8 individual committee members who voted to appoint Mr. Hage
9 as the plan administrator. And at the time we thought it
10 would be a liquidating trustee, but same role. There are
11 three individuals -- we had discussed -- just a moment, Your
12 Honor.

13 I just wanted to make sure we weren't waiving any
14 attorney-client privilege.

15 There are three committee members who voted to
16 appoint two co-trustees together. Mr. Hage would have been
17 one. And so I don't know whether you would call that
18 unanimous or not, but that's what the vote was. Again, four
19 that voted to appoint Mr. Hage only, three who voted to
20 appoint two co-trustees, one of whom would be Mr. Hage.

21 UNIDENTIFIED SPEAKER: Okay. I just want to make
22 sure I understand this correctly. So four people just voted
23 for Mr. Hage and then three people voted for Mr. Hage plus
24 one other person to be co-trustees with Mr. Hage?

25 MR. AZMAN: Yes.

1 UNIDENTIFIED SPEAKER: Okay. And since it's four
2 against three -- so I can see why it's unanimous in the
3 sense that all seven said Mr. Hage. But three of the seven
4 at least wanted a secondary person almost an oversight,
5 someone to check over Mr. Hage to make sure that he's doing
6 his job properly. So there's a tiebreaker there because
7 it's four against three. Would you be allowed to say if one
8 of the people that's on the four side was Jason Raznick,
9 giving an advantage to just having Mr. Hage by himself
10 versus having the co-trustee, of having that oversight over
11 Mr. Hage?

12 THE COURT: I don't think that's -- first, I don't
13 think it's a question for the witness. But also, I didn't
14 hear the Committee counsel say that three people wanted an
15 additional person as an oversight of Mr. Hage. They just
16 said that they thought that there should be two trustees
17 instead of one.

18 UNIDENTIFIED SPEAKER: You're right, Your Honor.
19 He didn't use the word oversight. I am interpreting it that
20 way, that that might have been the intention --

21 MR. AZMAN: Let me further clarify. I'm just
22 reading the minutes more closely. Just to be clear, of the
23 three who said Mr. Hage plus one -- and I did not say that
24 they would be in an oversight role. There's two co-
25 trustees. Of those three, one voted for Mr. Hage to appoint

1 Mr. Hage with potentially one more trustee depending on the
2 total price. I don't -- yeah. That's just what the minutes
3 reflect. That's all.

4 THE WITNESS: Well, and let me add to that. I
5 know that that was part of the consideration in that it is
6 no secret that the professional fees have been significant
7 in this case. It's a complex case and it's been
8 professional-intensive. And I do believe that a factor that
9 the Creditors' Committee considered was the expense of
10 having multiple trustees. It is not uncommon to have
11 multiple trustees. It's also not uncommon to have a single
12 trustee. It is not uncommon -- in fact, I would say in my
13 experience representing committees and trusts, it is not at
14 all uncommon for the Committee to negotiate as part of the
15 Chapter 11 case that there will be a post-confirmation
16 trustee. And it is not uncommon for the selection of that
17 trustee to be done by the creditors' committee, and it is
18 not uncommon even for members of the creditors' committee to
19 serve in that capacity. And so that is all part of the
20 deliberation that went into this. One of my selling points,
21 because I'm very mindful of the professional fees and that
22 every dollar that is spent is a dollar that's not available
23 for customers, is my rate, and that I am located in Michigan
24 and not in New York. And therefore, my rate is
25 substantially less than New York rates. And I'm sure that

1 that was part of the consideration that was given by the
2 Committee.

3 UNIDENTIFIED SPEAKER: And to my question, would
4 we be allowed to know which way Jason Raznick voted?

5 MR. AZMAN: Is that a question for the witness or
6 --

7 THE COURT: I think it's a question to you as
8 counsel, not to the witness. Because you're the only one
9 that has the information.

10 MR. AZMAN: Sure. Mr. Raznick voted for Mr. Hage
11 only.

12 UNIDENTIFIED SPEAKER: So Jason Raznick voted so
13 that Mr. Hage got all of the business versus it being split
14 with somebody else is kind of how I see that. Okay.

15 Other than asking questions, it's not like I
16 really have any power in this case. But I do for the record
17 want to state that I object to Mr. Hage. Nothing against
18 him personally. I'm sure he does his job well. But
19 considering everything that has surrounded this -- that has
20 been -- this case being surrounded by so much non-
21 transparency and just, like I already said, the whole let's
22 scratch each other's backs and let's do each other favors.
23 So for the record, I object to Mr. Hage being a plan
24 administrator and I would prefer that someone else be
25 chosen.

1 THE COURT: Okay, I understand that. Do you have
2 any more questions for Mr. Hage?

3 UNIDENTIFIED SPEAKER: No. Thank you so much,
4 Your Honor.

5 THE COURT: Okay. Anybody else who wishes to
6 question Mr. Hage?

7 MR. NEWSOM: Your Honor, this is Dan Newsom, pro
8 se creditor.

9 THE COURT: Okay. Please proceed, Mr. Newsom.
10 BY MR. NEWSOM:

11 Q Good evening, Mr. Hage. In your representation of Mr.
12 Raznick, did you advise him on how to act in the best
13 interest of creditors (indiscernible)?

14 MR. CALANDRA: Your Honor, I am going to object
15 that we're invading the client privilege here. I don't mind
16 him just answering yes or no, but any further than that, I
17 would object.

18 THE COURT: It seems to me you can answer yes or
19 no to that question without breaching the privilege.

20 BY MR. NEWSOM:

21 A Yes.

22 Q Did you unofficially advise other members of the UCC on
23 (indiscernible) during the meetings?

24 MR. CALANDRA: Objection. Don't even understand
25 what unofficially means.

1 THE COURT: I don't, either. Objection sustained.

2 BY MR. NEWSOM:

3 Q Do you agree that one of the roles of the UCC is to
4 monitor fees (indiscernible) bankruptcy (indiscernible)?

5 A I'm sorry. I am having a hard time hearing the
6 question.

7 THE COURT: Do you agree that one of the roles of
8 the UCC is to monitor fees was the question.

9 BY MR. NEWSOM:

10 A I do.

11 Q I believe in one of the objections, Mr. Raznick stated
12 he has no control over fees. Did you advise him not to
13 raise objections or concerns to the fees?

14 MR. CALANDRA: Now we're getting into the
15 privilege, Your Honor. I object.

16 THE COURT: Did you have any non-privileged
17 communications with Mr. Raznick on that subject?

18 THE WITNESS: No.

19 THE COURT: Okay.

20 THE WITNESS: Not that I recall.

21 THE COURT: All right. The privilege belongs to
22 Mr. Raznick. I can't let the witness violate his
23 professional obligations and testify about matters that are
24 privileged.

25 MR. NEWSOM: Understood.

1 BY MR. NEWSOM:

2 Q If I might ask, what was the final result of the vote
3 in the meeting regarding the settlement?

4 A I'm very sorry. I -- could you ask the question again?

5 THE COURT: What was the final vote on the motion
6 to approve the settlement? The one that you said Mr.
7 Raznick opposed.

8 BY MR. NEWSOM:

9 A I believe it was four in favor of not objecting to the
10 settlement, two who were voting in favor of objecting to the
11 settlement, and one, Mr. Raznick, who abstained.

12 Q To the best of your belief, that abstention did not
13 affect the outcome, correct?

14 MR. CALANDRA: I'm sorry, I didn't hear the
15 question.

16 THE COURT: The abstention then did not affect the
17 outcome of the vote. Is that right?

18 BY MR. NEWSOM:

19 A That is correct. Mr. Raznick voted last. And at that
20 point, the outcome of the vote had been determined.

21 Q Okay. And I'm not sure if this is attorney-client
22 privilege, but I'll ask and allow the Court to decide.

23 (indiscernible) corporation have any holdings on the
24 platform that were withdrawn within the 90 days prior to the
25 petition?

1 MR. CALANDRA: I'm sorry, I didn't even hear the
2 question. Could you repeat the question, please?

3 THE COURT: It was something about whether there
4 was somebody who had withdrawals in the 90 days before the
5 petition.

6 MR. SLADE: (indiscernible) money on the platform
7 that was withdrawn within the 90 days.

8 BY MR. NEWSOM:

9 A I do not know.

10 Q Did Mr. Raznick have any holdings that were withdrawn
11 in that same timeframe?

12 A I believe he did, although I don't know the amounts or
13 dates. He wasn't treated any differently than any other
14 retail customer in that regard.

15 Q Has the Committee -- strike that. It's your
16 representation Mr. Raznick prevents you from advising the
17 Committee to contemplate pursuing insider clawbacks or other
18 preferential clawbacks of those with insider knowledge?

19 MR. CALANDRA: Objection. I'm not sure if he's --
20 was advising the Committee. He was advising Mr. Raznick.

21 THE COURT: What was the question?

22 BY MR. NEWSOM:

23 Q I'll rephrase. It's your representation that Mr.
24 Raznick prevents you from advising him to contemplate
25 pursuing insider clawbacks for those within insider

1 knowledge?

2 THE COURT: Did your representation of Mr. Raznick
3 prevent you from advising the Committee? Is that what your
4 question was?

5 MR. NEWSOM: Mr. Raznick specifically.

6 THE COURT: Mr. Raznick specifically.

7 MR. AZMAN: Objection. Mr. Raznick wouldn't have
8 the ability to pursue. I think it's a misunderstanding of
9 the function of the Committee and Mr. Raznick's role, Your
10 Honor. I think the witness can answer because I think he
11 understands.

12 BY MR. NEWSOM:

13 A I'm sorry, I don't understand the question.

14 Q I believe the objection -- the question sort of was
15 answered. So at this point I will pass the stand.

16 THE COURT: Okay. Anybody else on the phone who
17 wishes to question Mr. Hage?

18 MR. HENDERSHOTT: Yes, Your Honor. Tracy
19 Hendershott, pro se creditor.

20 THE COURT: Okay.

21 MR. HENDERSHOTT: Thank you.

22 BY MR. HENDERSHOTT:

23 Q Good evening, Mr. Hage.

24 A Good evening.

25 Q Sorry?

1 THE COURT: He said good evening.

2 BY MR. HENDERSHOTT:

3 Q You can hear me fine?

4 A I can.

5 Q Yes, thank you. Excellent. So just to clarify, you
6 know, the creditors have filed the objection. It's not
7 necessarily against you, Mr. Hage. We don't even know you.
8 Our objection is overall the conduct of this trial what we
9 feel is the inappropriate status of Chapter 11. We feel
10 that there's fraud and dishonesty (indiscernible) gross
11 mismanagement. We feel that when the Texas Attorney
12 Generals brought this up back in October as well as
13 creditors bringing it up in January, this case should have
14 been converted to a Chapter 7.

15 You've extensively highlighted your credentials and
16 expertise in bankruptcy. Textbooks, articles, education,
17 experience. I'm curious if you could share with us your
18 beliefs on the status of this case remaining in Chapter 11
19 when numerous cases and United States Code (indiscernible)
20 United States Trustee that the primary role of Chapter 11 is
21 to (indiscernible) comprehensive reorganization according to
22 the United States Code (indiscernible), one of the paramount
23 objectives of a Chapter 11 is reorganization, iso to
24 rehabilitate, none of that which is happening in this trial.

25 So I'm curious, as the plan administrator going

1 forward, what is your viewpoint on the status of whether
2 this should have been Chapter 7 or Chapter 11.

3 MR. CALANDRA: Your Honor, I object to this
4 question. It's not even relevant what his view is on this.

5 THE COURT: Do you really object?

6 MR. HENDERSHOTT: It's going to be (indiscernible)
7 as we ask follow-on questions. You know, his methodology,
8 his pursuit of clawbacks, releases, communication style
9 (indiscernible) appointed to the role of administration.

10 THE COURT: I actually don't think it has anything
11 to do with those points, but I will allow him to answer the
12 question.

13 BY MR. HENDERSHOTT:

14 A It was a long question, but what I would say is that
15 Chapter 11 of the Bankruptcy Code is used to reorganize
16 businesses, it's frequently used to sell businesses, and it
17 can be used to liquidate businesses. The purpose and the
18 goal of every Chapter 11 case is to maximize value for the
19 benefit of creditors.

20 In this case, I believe that the plan that is before
21 the Court is the best method of what I've been aiming to
22 achieve throughout this case, which is to get the most
23 amount of money back to creditors as soon as possible.

24 And in terms of -- there was some reference to claims
25 and causes of action. That is the work that continues to be

1 done. Again, with an eye towards maximizing the return to
2 all creditors.

3 Q Thank you for that response and insight. So let's talk
4 about the specifics of when you (indiscernible) to get
5 appointed as the administrator (indiscernible). Clawbacks
6 (indiscernible) just recently after voting was completed,
7 unfortunately. The claw backs proposed for retail clients,
8 customers, creditors only with a limit of 20 days between
9 the point of petition (indiscernible). My understanding is
10 that for retail customers, the standard clawback period is
11 90 days with one year for insiders. As a potential
12 administrator on a go-forward basis, are you abiding by that
13 20-day limitation only for retail customers, no clawbacks
14 for insiders?

15 THE COURT: What is this 20-day period?

16 MR. AZMAN: Your Honor, Mr. Hendershott is
17 referring to an amendment to the APA that was filed I think
18 a few days ago. What I think Mr. Hendershott -- I'm going
19 to try to help Mr. Hendershott with the question here. What
20 Mr. Hendershott may not realize is that -- yeah. What Mr.
21 Hendershott may not realize is that as part of the
22 transaction with Binance, Binance specifically negotiated to
23 acquire all claims that the estate has against customers.
24 Of course the idea being that they're basically buying
25 Voyager's customers. They don't want the estate to turn

1 around and sue the customers they just bought. Very common
2 in bankruptcy.

3 We have, however, a provision in the APA that
4 allowed the Committee to go to Binance and show them certain
5 transactions that we would request that they allow to be
6 carved out so that they could be preserved for the benefit
7 of creditors. They had no obligation to agree if we came to
8 them. But we did to go them with certain criteria. And
9 there were really two criteria that we came to them with.
10 One was former customers who were not creditors as of the
11 petition date. And the idea behind carving those customer
12 claims out is that they're not creditors. They don't even
13 have an opportunity to vote on the plan, by the way. But
14 there should be no reason that Binance would care if the
15 estate were to investigate and pursue former customers who
16 do not move over to Binance, nor could they. Because,
17 again, they don't have anything on the platform.

18 There are 32,000 customers that fall into that
19 bucket. We call them former customers. Binance agreed to
20 amend the APA in that manner. In addition to that -- and
21 it's approximately 32,000. I think it's like 32,800 or so.

22 In addition to that, the second criteria -- and
23 there were 92 creditors that satisfied the second criteria.
24 Essentially what we were looking for were indicia of
25 customers who may have had advanced notice of the freeze or

1 the withdrawal limits that were getting ready to be imposed
2 on customers and thus got their money out before others did.
3 And that is what we went to Binance with. And we thought
4 that that would be justifiable to Binance, and it was. And
5 I don't think that they would have accepted anything else
6 for the reasons that I stated earlier.

7 Mr. Hage, as counsel to Mr. Raznick, has nothing
8 to do with whether that negotiation ended up in the place it
9 did, of course. Mr. Raznick will have to live with whatever
10 the plan and the APA say, and that is what is before Your
11 Honor. I hope that's helpful, and I'm sorry to bring an
12 argument to this, but I thought it would be helpful to
13 clarify for Mr. Hendershott.

14 MR. HENDERSHOTT: I do appreciate that, Mr. Azman.
15 So the question is --

16 THE COURT: Hang on, Mr. Hendershott. We've got
17 to -- because of the timing, we have to probably terminate
18 and re-log in. Is that it, Jackie? Does everybody need to
19 dial back in or do you just need to do it?

20 CLERK: No, I just need to do it. That's all.

21 THE COURT: We'll take five minutes.

22 (Recess)

23 THE COURT: All right. Please be seated. I think
24 we've reconnected to Court Solutions. It is quarter to
25 seven. I would say that -- I'm not sure everybody

1 appreciates it, but in light of the number of pro se people
2 who are interested, I have been much more lenient than usual
3 in terms of the questions I have allowed. I have tried to
4 do that to try to make sure that everybody feels like
5 they've had their questions addressed, even if not totally
6 to their satisfaction, even where we've frequently strayed
7 off the issues that are actually before us today. But given
8 how late it already is, I will just make a plea that we
9 focus on what's left of relevance to Mr. Hage himself, which
10 is whether he has any conflicts of interest and whether he
11 is appropriate for the choice as plan administrator.

12 So, Mr. Hendershott, I think you were asking
13 questions. Would you like to continue?

14 MR. HENDERSHOTT: Yes, Your Honor. Thank you.

15 BY MR. HENDERSHOTT:

16 Q So, Mr. Hage, we left off on clawbacks, which is going
17 to be a primary role of your position. Is that correct?

18 A Did you say clawbacks?

19 Q That's correct.

20 A I wouldn't characterize that as the primary role here.
21 As Mr. Azman noted, the Committee was able to negotiate to
22 retain some of the -- by clawbacks I assume you mean
23 bankruptcy preference actions -- was able to negotiate that
24 some of those be preserved. But, look, there's a wide
25 variety of potential claims and causes of action that may

1 exist here. I think that the primary focus in this case has
2 been on specifically trying to exercise, execute a
3 transaction quickly that would get money back to creditors.
4 And so other than as necessary and appropriate for purposes
5 of dealing with the release issues that are in the plan, I
6 would say a comprehensive investigation of all of the
7 potential claims and causes of action that may be pursued by
8 me as the plan administrator has not yet been conducted.
9 But it will be conducted. And if we conclude that there is
10 merit to those claims and that there are collectable
11 entities that are pursued such that it's a good use of
12 creditors' money to pursue them, we will pursue them.

13 Q That's great. (indiscernible). Under the current
14 manner of clawbacks, instead of the standard 90 day for
15 retail and one year for insiders -- and Mr. Azman can
16 correct me if I'm wrong. My understanding is it's 20 days
17 for retail, a defined subset that Mr. Azman clearly
18 articulated, and zero clawbacks for insiders. Am I
19 misunderstanding that?

20 THE COURT: I think if I understand it correct,
21 it's 90 days unless somebody has become a Binance customer,
22 in which case part of the sale agreement and the exchange
23 for the \$20 million and other consideration was that claims
24 against that person would be released except that the
25 release would not apply as to those persons if they had

1 advance knowledge of the closing of the platform and if they
2 withdrew within -- that's where the 20 days comes in. Am I
3 right about that?

4 MR. AZMAN: Yeah. I don't remember the exact
5 number of days. It might be 20 days. But yes, exactly what
6 you said, Your Honor.

7 THE COURT: Okay. And is there any proposed
8 limitation of the one-year insider preference period? Not
9 that I recall.

10 MR. SLADE: I'm sorry, what was the question?

11 THE COURT: Is there any proposed limitation of
12 the one-year insider preference period?

13 MR. SLADE: No, but if they're covered by the
14 release -- that was --

15 THE COURT: Okay. I see. That's right. Yes.
16 There is in the sense that they're released. That's right.
17 Okay.

18 MR. HENDERSHOTT: So I'm correct. It was zero
19 clawbacks for insiders, 20 days for retail.

20 THE COURT: No. No, that's not -- when you say 20
21 days for retail, 90 days for retail unless you are customer
22 who has gone to Binance, in which case the claim preference
23 clawback claims are released except that those people will
24 not be released if they knew about the closing of the
25 platform in advance and made withdrawals within the 20 days

1 before the platform was closed down. Have I stated that
2 correctly, Counsel?

3 MR. AZMAN: The only slight clarification is it's
4 not that they knew about it, because we don't know yet if
5 they knew about it. They're being preserved based on
6 indicia that we've developed, and they will be investigated.
7 They may not even be pursued. This is nothing about whether
8 or not --

9 THE COURT: so It's 90 days for retail unless
10 you're a Binance -- become a Binance customer, in which case
11 it may be narrower. Okay?

12 MR. HENDERSHOTT: Okay.

13 BY MR. HENDERSHOTT:

14 Q So, Mr. Hage, I've spoken to numerous bankruptcy
15 lawyers. This is the first time I've ever heard of any
16 retail being clawed back and no action taken -- that's the
17 other for the insiders. And actually, the law extends the
18 timeline for insiders specifically because they have more
19 responsibility, more insight, more knowledge than the
20 typical retail customer. So can you justify how all
21 insiders are let off the hook from this very painful process
22 (indiscernible)?

23 THE COURT: I'm sorry, Mr. Hendershott, that's not
24 Mr. Hage's decision. That's a provision of the plan. And I
25 will hear your argument as to whether that should happen.

1 That's a function of the releases that have been proposed.
2 But whoever is -- if I confirm the plan, whoever turns out
3 to be the plan administrator will live with whatever the
4 terms of the plan are. It's not going to be that person's
5 decision as to whether those insiders were already released
6 or were not already released. That's an issue that's
7 separate from anything that Mr. Hage would have any possible
8 control over. It will either have happened because the
9 releases are approved, or it won't happen because the
10 releases won't be approved, and you can make your arguments
11 when we talk about releases later. But it really has
12 nothing to do with what Mr. Hage is going to do. He'll have
13 to live with whatever --

14 MR. HENDERSHOTT: (indiscernible).

15 THE WITNESS: Whatever claims or --

16 MR. HENDERSHOTT: (indiscernible).

17 THE WITNESS: (indiscernible) assigned to the
18 trust, I will investigate and pursue as any proper fiduciary
19 would do.

20 BY MR. HENDERSHOTT:

21 Q Great. (indiscernible). I'm not an expert by any
22 means. I thought you had more autonomy to make those
23 decisions.

24 So as the plan administrator, once it's approved by
25 Judge Wiles, do you have the ability to make amendments to

1 it after the winddown trust entity is in effect?

2 THE COURT: Make amendments to what?

3 MR. HENDERSHOTT: The plan that you just mentioned
4 he has to comply with after your ruling, which
5 (indiscernible) of the plan (indiscernible) couple of days.
6 I'm curious if the administrator is authorized to continue
7 revising the plans post conclusion of the case and during
8 the lifespan, which could be years, of the winddown entity.

9 THE COURT: There are specific code provisions
10 that apply to request to modify a plan after it has been
11 confirmed. It is not impossible, but you have to satisfy
12 certain standards and you have to come back to me to get
13 approval to make those modifications. So I don't know if
14 that answers your question, Mr. Hendershott. But again,
15 whatever powers there are in general are really not
16 functions of this plan or of what's been proposed to
17 delegate to Mr. Hage.

18 MR. HENDERSHOTT: I feel that you've answered my
19 question. There is a process (indiscernible) potentially by
20 the administrator, but it's a court internal process of
21 amendments. Is that correct?

22 THE COURT: Yes, there is. There is a provision
23 in the Code --

24 MR. HENDERSHOTT: Thank you, sir.

25 THE COURT: Well, let me actually check that.

1 Maybe I just misquoted it. There is a provision for changes
2 to a time after confirmation and before substantial
3 consummation. Okay? In other words, if something changes
4 between the substantial consummation of the -- the
5 confirmation and substantial consummation, it can be
6 changed. And I don't want --

7 MR. HENDERSHOTT: Okay. And then after that, Your
8 Honor, there's no ability to amend?

9 THE COURT: Well, at some point it's done and
10 there's nothing to amend. I really -- you know, I can't
11 give you legal advice, and that's about as far as I can talk
12 to you about just -- you know, I'm not going to give you a
13 treatise on plan amendments, unfortunately. I can't. I'm
14 not allowed.

15 MR. HENDERSHOTT: Sure. I understand.

16 BY MR. HENDERSHOTT:

17 Q Okay. So, Mr. Hage, releases. Currently every single
18 entity that's touched this case, from the Debtors
19 (indiscernible) officers, employees, every single
20 professional, everyone except for the creditors are
21 receiving releases in this case. Can you (indiscernible)
22 that that is appropriate, especially under the recent
23 rulings of Purdue and even the Supreme Court just came out
24 with a ruling last week (indiscernible). Is that
25 appropriate in your opinion?

1 MR. SLADE: I object Your Honor. I don't know how
2 the witness is supposed to answer that question.

3 THE COURT: He's not the one -- he is not the one
4 proposing the releases. Do you understand that?

5 MR. HENDERSHOTT: He provided consult to the
6 chairman of the UCC (indiscernible). Am I wrong?

7 MR. SLADE: That is privileged, Your Honor.

8 THE COURT: Well, he can't testify about advice he
9 gave to Mr. Raznick.

10 MR. HENDERSHOTT: I'm not asking for his
11 discussion with Mr. Raznick. I'm asking for his opinion.

12 MR. AZMAN: I don't even know that he did
13 (indiscernible).

14 THE COURT: Yeah. I will sustain the objection.

15 BY MR. HENDERSHOTT:

16 Q Okay. Moving on. There was a lot of discussion, Mr.
17 Hage, about your experience, and it was very impressive.
18 (indiscernible) and may have just missed it, is your
19 experience in this particular role as a plan administrator.
20 Could you -- forgive me if you have to repeat it. But could
21 you expand on that, please?

22 A I have not personally served as a plan administrator
23 before. I have on multiple cases represented post-
24 confirmation fiduciaries. So I am very -- it's a
25 significant part of my practice. And so I am very familiar

1 with the duties that exist for post-confirmation
2 fiduciaries, the legal issues that come up with the types of
3 claims and causes of action that are frequently pursued and
4 I expect will be investigated here in the process.

5 Q Okay. So I didn't miss it. There is no direct
6 experience as a plan administrator before. And you
7 (indiscernible) about being a bankruptcy judge. I don't
8 know if that was purely (indiscernible) or maybe a
9 combination of both. But would being a plan administrator
10 be on the pathway for you to achieve being a bankruptcy
11 judge (indiscernible)?

12 A I think when bankruptcy judges are selected, that the
13 respective court of appeals looks at a variety of factors.
14 An applicant's professional experience, an applicant's
15 personal integrity, his reputation within the community,
16 both locally and beyond that. His empathy, his or her
17 empathy for creditors, his judicial temperament. These are
18 all things they look at in deciding who to select for a
19 judgeship. And so in terms of relevant experience, I think
20 that having experience serving as a fiduciary would probably
21 be something that a court would look at and view as a
22 positive thing so long as the fiduciary acted as a
23 fiduciary, which certainly is my intention.

24 Q That makes sense. So (indiscernible) the motivation
25 (indiscernible). That's a very admirable path that you're

1 on (indiscernible). But my only concern is this is the
2 first major crypto bankruptcy. It's a mega case. The first
3 thought that comes to my mind, Mr. Hage, is maybe your first
4 role as plan administrator could be on a less-complex,
5 smaller size, not with all the novel complexity that is
6 found in this case.

7 MR. AZMAN: Is that a question?

8 THE COURT: Yes, it's a question.

9 MR. HENDERSHOTT: It is a question.

10 THE COURT: What do you think?

11 BY MR. HENDERSHOTT:

12 A I would say that because the plan contemplates a
13 transaction where much of the crypto assets will be
14 transferred prior to my taking the position, I think that
15 crypto, while an important part of this case, in many ways
16 the role of the plan administrator will be similar to the
17 role of the plan administrator in every Chapter 11 case,
18 which is to investigate and pursue causes of action. And
19 there aren't a lot of cryptocurrency in bankruptcy experts
20 in the world because this is a very fairly new experience
21 with the crypto bankruptcy cases that have been filed over
22 the last eight months. I would say that I have quite a bit
23 of knowledge and experience about the intersection of
24 cryptocurrency and bankruptcy as a result of my involvement
25 in these cases.

1 Q Interesting. You talk about the (indiscernible) with
2 the previous creditor. Have you seen the objection to the
3 motion for approval of the plan that was submitted with the
4 survey results, that was submitted to them through a third
5 party, independent, SurveyMonkey, about the creditor class
6 satisfaction with the representation, the letter of
7 communication that was provided from your client to the
8 creditor class?

9 MR. CALANDRA: It's not in evidence, Your Honor.

10 THE COURT: I'm sorry?

11 MR. CALANDRA: The survey results are not in
12 evidence. They're hearsay.

13 THE COURT: The only question so far is --

14 MR. HENDERSHOTT: They are in evidence.

15 THE COURT: The objection --

16 MR. HENDERSHOTT: You submitted them --

17 THE COURT: The objection is overruled. You've
18 asked him if he's seen them. I'll let him testify.

19 BY MR. HENDERSHOTT:

20 A I did read that objection, as I've tried to read all of
21 the objections to the plan that have been filed.

22 Q And did you see that 97 percent of the creditors that
23 responded voted that the UCC representation has been a
24 failure to the creditor class?

25 A I remember the survey. I don't remember the details of

1 the survey.

2 Q Okay. And so it's on the docket. It's document number
3 161. And if you trust me, I can read the results to you.
4 It's 97 percent of the creditors responding perception of
5 failure of UCC representation. 94 percent of the creditors
6 responding Jason Raznick in his role as UCC chairman failed
7 the creditor class.

8 You were directly responsible for providing guidance to
9 Mr. Raznick as that chairman of the UCC committee. Do you
10 find these findings concerning, significant? Is there any
11 lessons learned (indiscernible) your own behavior and
12 engagement between yourself as administrator and the
13 creditors that you would take away from these survey results
14 on a go-forward basis?

15 A What I take from those results is that there is a group
16 of creditors in this case who are dissatisfied with the
17 committee representation. I will say that -- I was not the
18 committee. I did not represent the committee. I
19 represented a member of the committee. But I know that in
20 terms of communications with creditors, there were I believe
21 four town halls that the committee professionals -- I was
22 not one of them -- participated in and answered questions
23 for lengthy periods of time from creditors in the case. I
24 know that they have maintained a Twitter link to provide
25 updates on the case. And I believe that this committee

1 tried very hard to communicate as much as possible when you
2 have a creditor body of this size. But I was not personally
3 involved in those discussions.

4 Q Well, that's my concern. So I'm not hearing that you
5 would do anything different. And actually, as part of the
6 objection, (indiscernible). Pardon?

7 THE COURT: What was the question?

8 MR. HENDERSHOTT: Can you hear me?

9 THE COURT: We can hear you. But what was the
10 question?

11 MR. HENDERSHOTT: I haven't finished asking it
12 yet. Proceed?

13 THE COURT: If you have a question, proceed. Yes.

14 BY MR. HENDERSHOTT:

15 Q Yes. So as part of that same objection, Mr. Hage,
16 (indiscernible) with the creditors that your direct
17 communication expressly stating that it was not the
18 responsibility of the UCC to communicate. And that is a
19 direct result (indiscernible) to the 90-plus percent
20 dissatisfaction rate. So it's very concerning to hear that
21 you wouldn't change anything and that you feel that the
22 level of communication (indiscernible) in this case.
23 (indiscernible) and I will pass on the podium at this point.
24 Thank you, Mr. Hage, for your time.

25 THE COURT: Okay. Are there any other questions

1 for Mr. Hage?

2 MR. JONES: Seth Jones, pro se, Your Honor.

3 THE COURT: Okay, Mr. Jones.

4 MR. JONES: I've got some questions.

5 BY MR. JONES:

6 Q Jason Raznick in the past has said that he had to hire
7 a (indiscernible) lawyer before the UCC professionals were
8 hired. How much work did you do for the UCC members
9 (indiscernible) in this case?

10 THE COURT: Can you answer that question?

11 MR. AZMAN: Could I -- I'm not sure I heard.

12 THE COURT: The question was how much work did you
13 do for Mr. Raznick before McDermott was hired to --

14 MR. JONES: No, no. the group. By the group.

15 THE COURT: I'm sorry?

16 MR. JONES: By the group.

17 MR. AZMAN: He didn't represent the Committee.

18 THE COURT: He didn't represent the Committee, so
19 I'm not sure what your question is.

20 MR. JONES: No. Jason Raznick in the past has
21 said that he hired a personal lawyer which helped
22 (indiscernible) that a lot of work had to go in to figure
23 things out. How much work was he involved with the other
24 members of the UCC before McDermott was hired?

25 THE COURT: Were you -- were you involved in any

1 work with the other members of the Committee before
2 McDermott was hired?

3 THE WITNESS: I was.

4 THE COURT: Okay.

5 BY MR. JONES:

6 A I met -- I spoke with Mr. Raznick for the first time
7 sometime in mid-July. I believe the creditors' committee
8 selected McDermott in late July. It is common in the -- I
9 don't remember exactly the date when the creditors'
10 committee was formed, but it was sometime in the middle
11 there. It is not uncommon when there are appointed for them
12 to have their attorneys participate in that process. That
13 was I think particularly important in this case because,
14 whereas in many cases the creditors' committee consists of
15 usually seven trade creditors, some of whom have familiarity
16 with the bankruptcy process.

17 In this case, the diverse committee that was appointed
18 by the Office of the United States Trustee consisted all of
19 retail customers of Voyager who, to my knowledge, none of
20 whom -- no, I believe actually one of them may have served
21 on a creditors' committee before, but most of them had no
22 experience with the bankruptcy process at all.

23 And so as an attorney representing one of the members
24 of the Committee for that week or so period before McDermott
25 was hired as the counsel for the Committee, I took efforts

1 to help organize the Committee in terms of helping to deal
2 with a deluge of pitch packages that Committee members
3 received and coming up with an organized process of
4 identifying who we wanted to interview, who they wanted to
5 interview, and who they -- not me -- wanted to select.

6 Q Do you think in that week process, that gave you a leg-
7 up on getting appointed by the winddown trust?

8 A No.

9 Q How many applied and how many interviewed for the
10 winddown trust?

11 A I cannot speak to how many applied. I believe that the
12 Creditors' Committee interviewed three individuals. I say
13 that because it was in a pleading, I believe, that the
14 Committee filed. But I don't know how many people expressed
15 interest in it.

16 Q what is the voting procedures for the UCC when voting?
17 Is it one-by-one or is it a blind vote or what?

18 A As is customary for creditors' committees -- and I have
19 a lot of experience working with creditors' committees, as
20 do many of the other attorneys in the room here, it is -- I
21 have never seen a committee where it wasn't true that each
22 committee member -- again, it's usually seven members --
23 each committee member gets one vote. No one member's vote
24 carries more weight than any other committee member. The
25 chair does not have veto power or a more weighted vote.

1 It's not done proportionate based on the size of a
2 creditors' claim. Each of the usually seven members gets
3 one vote, and it's majority rule with the exception that to
4 the extent there is any sort of conflict issue that comes
5 up, that somebody recuses themselves.

6 Q What was the voting procedures when they vote?

7 A What was the voting procedures?

8 Q Yeah, how did the voting procedures work? Is it a one-
9 by-one vote?

10 A Yes. Well, I've seen it done different ways. Usually
11 committee meetings are going to be run by the professionals
12 for the committee. In this case, that would be McDermott
13 and FTI. When an issue is presented for a vote, each
14 creditor votes. And usually they just roll through the
15 roster, vote yea or nay.

16 Q So one by one.

17 A That's correct.

18 Q Okay. So -- all right. Why didn't Jason Raznick vote
19 no if he claimed that (indiscernible). You said abstain is
20 the same method as voting no.

21 THE COURT: I think there were two questions
22 there. Which one do you want to ask?

23 BY MR. JONES:

24 Q Okay. Do you think abstaining is the same method as
25 voting no?

1 THE COURT: Was abstaining the same as voting no?

2 Is that what you are asking?

3 MR. JONES: Abstain. Abstaining.

4 THE COURT: Yeah.

5 MR. JONES: Abstaining to a vote.

6 BY MR. JONES:

7 A I know that at the time Mr. Raznick voted, the decision
8 had already been determined because the requisite majority
9 of committee members had already voted not to object to the
10 settlement. Why Mr. Raznick -- and this was a heavily
11 debated thing. This was not an easy decision. It was not
12 an easy decision for any of the committee members. It was
13 heavily debated and deliberated on. Because those committee
14 members are all retail customers, just like you, sir. And
15 those -- so anyway, he was the last to vote. The decision
16 had already been made at that point. And why he abstained
17 as -- instead of simply voting no or joining the pack, I
18 can't answer that. Joining the majority I should say.

19 Q When did the vote take place to appoint a plan
20 administrator?

21 A I don't recall the exact date, but I would -- I think
22 it was probably in late October or early November.

23 Q You said this is a complex case. Do you think one
24 trustee should have the power to control \$135 million
25 (indiscernible) recovering a billion dollars?

1 A Well, keep in mind that there is a three-person plan
2 administrator governing board. There is one plan
3 administrator. And the plan administrator in this case will
4 need to and will -- I will hire competent, experienced,
5 capable professionals to help fulfill that duty. So yes, I
6 do think it's good, it's sufficient.

7 And the alternative of having multiple trustees just
8 means more professional fees, which at the end of the day
9 will eat away at the recovery for customers and creditors.
10 All creditors, not just customers.

11 Q Is this true? The plan administrator shall have the
12 exclusive right, power, and interest to review, reconcile,
13 enforce, elect, compromise, settle, or elect not to pursue
14 the vested actions -- causes of actions, including, without
15 limitation, FTX, Alameda, and 3AC?

16 A There are provisions that deal with the plan
17 administrator's authority. And there's a generally broad
18 provision like that. There are some caveats to that I
19 believe where the amount at issue is subject to above a
20 certain threshold. I don't remember what those thresholds
21 are. But generally that's right. The plan administrator is
22 a fiduciary whose job is to decide which claims to pursue or
23 not to pursue, when to settle or not to settle, when to
24 litigate or not to litigate. And of course any fiduciary
25 would do that based on discussing and deliberating with the

1 professionals who that fiduciary has retained. And of
2 course in this case, like most cases, because there is a
3 trust or plan administrator governing board, in consultation
4 with them as well.

5 And in some cases, settlements are frequently done by
6 filing a motion with the bankruptcy court for approval of
7 settlements. And so in some cases, that may be something
8 that we would do as well.

9 Q Thank you for your time. I appreciate it.

10 A You're welcome.

11 Q That's all.

12 THE COURT: All right. Is there anybody else on
13 the phone who wishes to cross-examine Mr. Hage? Okay.

14 In that case, is there anybody here, any redirect
15 for the Debtors or any -- excuse me, examination by the
16 Debtors?

17 MR. SLADE: No, Your Honor. Thank you.

18 THE COURT: No? Redirect by the Committee?

19 MR. CALANDRA: No, Your Honor.

20 THE COURT: Mr. Hage, just very briefly. If you
21 uncovered circumstances that called -- that you thought
22 suggested that you ought to criticize the work that the
23 prior committee had done or that McDermott Will & Emery had
24 done, would you feel any hesitation or limitation on your
25 ability to make those criticisms?

1 THE WITNESS: No.

2 THE COURT: If you had to object to a claim by Mr.
3 Raznick, would you have the ability to do that, or would you
4 need to have conflicts counsel?

5 THE WITNESS: I think if there was an objection to
6 a claim of Mr. Raznick -- and that is precisely the reason
7 that I requested that there be that conflict provision
8 there, because ethically I don't think that that would be
9 something I could or should do.

10 THE COURT: Somebody else would handle that then.

11 THE WITNESS: That's correct.

12 THE COURT: So any decision about his proof of
13 claim or about preference actions against him, somebody else
14 would decide?

15 THE WITNESS: Absolutely.

16 THE COURT: Okay. All right. You are excused.
17 Thank you very much.

18 THE WITNESS: Thank you, Your Honor.

19 MR. SLADE: I know it's late, Your Honor. Mike
20 Slade for the Debtors. Before we close the evidentiary
21 record, there was just one thing that the Debtors wanted to
22 tell the Court.

23 I think we're just kind of struggling with what to
24 do with what the SEC said, you know, an hour or two ago.
25 You know, after years of doing nothing, now we have a

1 statement that the SEC staff thinks maybe the VGX token is a
2 security. It's kind of irrelevant because it's like
3 Kirkland & Ellis saying something, our client is not
4 allowing us to say it on behalf of our client. So I'm not
5 sure how relevant it is, but it may have an impact on what
6 the Debtors need to do with our plan. And I think we need
7 some time to think about it. Just as an example. We might
8 need to amend the plan to add an 1145 exclusion into it if
9 the SEC might take this position.

10 And so what I would ask Your Honor to do is leave
11 the evidentiary record open to allow us to do that if we
12 decide that the debtors want to amend the plan. And, Your
13 Honor --

14 THE COURT: We can reopen the evidentiary record
15 if the plan is amended. Would that serve your purpose? Do
16 we need to leave it open at this stage?

17 MR. SLADE: I would ask that you leave it open,
18 because I'm just not sure how we're going to handle it.

19 THE COURT: All right.

20 MR. SLADE: I mean, in some respects the position
21 they took this afternoon was even weirder than the kind of
22 nothingburger that they gave the Court yesterday. So I just
23 don't know what to do with it. But I do know that the
24 Debtor professionals and the committee professionals need to
25 talk about it.

1 THE COURT: Okay. On timing. We're not going to
2 have argument tonight because it's already 7:20. And I
3 would like to be able to understand the arguments,
4 participate in them. Monday I am committed to judge one of
5 the quarterfinal rounds at the moot court competition that
6 Mr. Hage has organized. So that would make it difficult for
7 us to continue on Monday, unless you wanted to start
8 argument on Monday afternoon. Or we can resume Tuesday.

9 But in either event, I would think that you're
10 going to have to have agreement by Binance to move that
11 milestone about the entry of the confirmation order.
12 Because I won't have enough time to hear argument even if we
13 do it on Monday and to make sure that we get something
14 entered even if I were to rule that way.

15 MR. GOLDBERG: Your Honor, Adam Goldberg. I'm
16 asking my client right now.

17 THE COURT: Okay.

18 MR. SLADE: Mr. Azman was mentioning he may have a
19 scheduling conflict. If we can work it out, does the Court
20 have availability on Wednesday?

21 MR. AZMAN: Well, actually, I don't think it works
22 for Debtors. So don't -- are we going to be in-person for
23 argument? I guess that's the question I had. Is there any
24 --

25 THE COURT: I would prefer that, yeah. Tuesday I

1 have some hearings at 10:00 that should not take an
2 extraordinary amount of time. And I have the rest of the
3 day Tuesday. On Monday, I cannot remember what time my
4 round starts at St. John's. I just don't remember. But I
5 would only have -- whatever time I could give back here, I
6 would only have a few hours in the afternoon.

7 MR. SLADE: As long as we can get relief from the
8 milestone, that --

9 THE COURT: Resuming Tuesday would be best.

10 CLERK: Your Honor, if we start on Tuesday, it
11 would have to be Tuesday at 11:00 a.m. And I would ask that
12 the parties -- is this going to be Court Solutions or is it
13 going to be a hybrid hearing?

14 THE COURT: It will be the same way we've done the
15 hearing itself.

16 CLERK: I would ask those parties who are going to
17 participate through Court Solutions to please register your
18 appearance before the hearing and register at 11:00 a.m.
19 Please don't make all different times. Today I have to
20 download 15 participation lists.

21 THE COURT: Okay. But let's make sure that that
22 is our time before we ask everybody to do that. We've still
23 got a lot of shuffling in the courtroom here.

24 MR. SLADE: Sorry, Your Honor, just reviewing
25 schedules.

1 THE COURT: I understand.

2 UNIDENTIFIED SPEAKER: Your Honor, while that's
3 happening in the background, may I just speak for a minute
4 to thank you?

5 THE COURT: Well, I'll never turn anybody down who
6 wants to do that.

7 UNIDENTIFIED SPEAKER: So I have 15 years of legal
8 experience, and I've been in a lot of courtrooms. And so
9 I've seen a lot of judges. And this whole confirmation
10 hearing is the first time I've actually participated in a
11 hearing. And lo and behold (indiscernible). But there have
12 been other creditors who have participated in the hearing,
13 and there has been mixed reviews. Some people saying, you
14 know, you seem like a good judge, some people saying that
15 they would prefer a different judge.

16 But I just want to say from what I've seen, you,
17 compared to other judges I've seen in my lifetime, are
18 actually very patient, very understanding, very helpful, and
19 very accommodating of us creditors. And I just want to say
20 that I really do appreciate that, and I hope you have a
21 great weekend, and I will see you Tuesday.

22 THE COURT: Thank you. On that patient,
23 understanding, and helpful stuff, can I get you to send that
24 to my son?

25 UNIDENTIFIED SPEAKER: (indiscernible).

1 MR. SLADE: Your Honor, the preference of the
2 parties is Monday afternoon if you can accommodate.

3 THE COURT: Sorry?

4 MR. SLADE: The preference of the parties, if you
5 can accommodate, is Monday afternoon.

6 THE COURT: Okay. We'll never finish Monday
7 afternoon, you realize that. Okay. We'll --

8 MR. AZMAN: Your Honor, I think the parties
9 collectively have scheduling conflict basically for the rest
10 of the week next week.

11 THE COURT: We will resume on Monday at -- Mr.
12 Hage, what time are the quarterfinal rounds? Do you have
13 any idea what my schedule is on Monday?

14 MR. HAGE: I don't. I think you're right. I
15 think that the judges in the Eastern District and the
16 Southern District of New York are right after lunch. But I
17 also know that you (indiscernible) St. John's, they could be
18 moved to the morning though.

19 THE COURT: Well, is it just after lunch or just
20 before lunch? I can't -- I thought it was just before
21 lunch, but I could be wrong.

22 MR. HAGE: I don't have -- I'm not involved -- for
23 the record, I'm not involved in the selection
24 (indiscernible).

25 THE COURT: Everybody is going to have to wait

1 while I call up my schedule here.

2 MR. HAGE: The first round (indiscernible) and
3 then (indiscernible).

4 THE COURT: Yeah, I know it's the second round. I
5 just can't remember if it's before or after lunch. I
6 thought it was just before lunch.

7 MS. TREVINO: Your Honor?

8 THE COURT: Yeah.

9 MS. TREVINO: This is Lisa Trevino, pro se
10 creditor. I just wanted to quickly ask you something. I
11 reached out to Kirkland & Ellis from our last hearing, not
12 this confirmation hearing. And I still don't have the
13 information that I had asked for. And it is the third, and
14 we have to get our information done by the 16th. Apparently
15 that's 13 days away. And seeing that I've been on these
16 confirmation hearings, I will have to work (indiscernible).
17 I am trying to get an answer on when I'm going to get that
18 information. I've sent emails, calls. I've spoken only
19 with one person. The gentleman called me back
20 (indiscernible). He said they were going to go back to
21 Voyager to get that information.

22 MS. SMITH: Your Honor, this is Allison Smith at
23 Kirkland. I actually corresponded with Mr. Trevino this
24 week and did relay to her that Voyager is pulling that data
25 and would send it as soon as they have it available and

1 offered to set up a call to walk through it with her. So
2 it's all in process and we are trying to get to her as
3 quickly as possible.

4 MR. TREVINO: I understand. But what I'm trying
5 to say is 13 days is not going to be enough time. And
6 that's going to be an issue. And, Your Honor, I would
7 really ask that you would move that back seeing that I have
8 asked for this information for quite some time and there is
9 a problem with my claim and I am really asking you to do
10 that, to move it back a little bit.

11 THE COURT: Let me just ask you. Work with the
12 Debtors. See what information you get. If for some reason
13 you need an extension of the deadline, you can ask then for
14 an extension of the deadline. But let's first just see if
15 they can get you information and see if it requires anything
16 else at that point. Okay?

17 MS. TREVINO: I think I missed what you said, sir.
18 It was too low. I couldn't heave you very well. I'm sorry.

19 THE COURT: What I was saying was just talk to the
20 Debtors. Get the information when they have it. If you
21 find at that point that you need an extension, you can ask
22 for it. But let's take it a step at a time. First get the
23 information and then see how much of an issue there is and
24 whether we really need any more time. Okay?

25 MS. TREVINO: Okay, Your Honor. I appreciate

1 that. I will be updating you. Thank you very much.

2 THE COURT: All right. I've finally gotten to my
3 schedule. And I am completely wrong. I am not judging the
4 quarterfinal round, I am judging the semi-final round, which
5 starts at 1:00 on Monday and ends sometime around 3:00 or
6 3:15.

7 MR. HAGE: I suspect that if you contacted the
8 (indiscernible), they could reschedule you for morning or
9 find a substitute.

10 THE COURT: Well, they might. But it's already
11 7:30 on Friday. How are they going to do that?

12 MR. HAGE: I can make a call (indiscernible). I
13 know, for example, that there (indiscernible) who has
14 volunteered to do a fill-in if necessary. And I suspect
15 that there are other judges in the preliminary round session
16 who would be willing to switch to make the accommodation.

17 THE COURT: Well, if it's a fill-in, then I can
18 just give you the entire day. And with apologies to St.
19 John's and the Duberstein competition just let myself be
20 replaced. Are you sure you have a replacement?

21 MR. HAGE: (indiscernible).

22 THE COURT: All right. In that case, we will
23 resume Monday at 10:00.

24 So notwithstanding what Lorraine said earlier, if
25 you're calling in for Court Solutions, Monday at 10:00. Not

1 a different time Monday. 10:00 Monday. Okay?

2 UNIDENTIFIED SPEAKER: Your Honor, I intend to
3 argue, but I have to travel to Ohio for another matter on
4 Tuesday morning. So can I do it by telephone?

5 THE COURT: Yes, you may.

6 UNIDENTIFIED SPEAKER: Thank you.

7 THE COURT: All right. Anything else before we
8 adjourn for the day? Okay. Thank you very much.

9 (Whereupon these proceedings were concluded at
10 7:31 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde".

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: March 8, 2023

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